IRIS NEWSLETTER

IRIS 2001-5

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

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INTERNATIONAL

BROADCASTING

GERMANY

IRIS 2001-5:1/7 [DE] ANGA and Premiere Reach Settlement

Caroline Hilger
Saarbrücken

The long-standing legal dispute between the Verband privater Kabelnetzbetreiber (Union of Private Cable Network Operators - ANGA) and pay-TV broadcaster Premiere over fees for carrying the analog TV channel has been settled out of court.

Under the terms of the settlement, Premiere is obliged to withdraw its appeal to the Bundesgerichtshof (Federal Supreme Court - BGH) against a decision of the Hanseatische Oberlandesgericht (Hanseatic Court of Appeal - OLG Hamburg) and a complaint it lodged with the Bundesverfassungsgericht (Federal Constitutional Court). Premiere has also agreed to reimburse all of ANGA's legal costs.

As a result, the earlier decisions given in ANGA's favour by the BGH (ruling of 19 March 1996, IRIS 1996-5:11) and by the OLG Hamburg have now entered into force.

During the proceedings, alongside its claim for payment of fees, ANGA had asked the courts to rule that it was not obliged to carry Premiere's channel on its cable network free of charge and that, until a suitable fee was agreed, it was entitled to refuse to carry the channel. ANGA argued that it was "unfair" to charge the cost of carrying Premiere to all users of the cable network, since it was an encoded channel that only a limited number of households on the network would be able to receive. Premiere should therefore pay ANGA a fee for use of its networks. Premiere, on the other hand, demanded equal treatment with other commercial channels, which were carried free of charge.

The Federal Supreme Court had largely agreed with ANGA's submissions in its aforementioned ruling and had referred the dispute back to the OLG Hamburg which, after re-examining the facts of the case, also ruled in ANGA's favour. Premiere appealed against this decision, although under the terms of the settlement, that appeal has been withdrawn.

In return, ANGA has agreed to carry the analog Premiere channel free of charge until 30 June 2001. By the end of the year, Premiere will, in any case, cease to use analog technology and will only broadcast pay-TV channel Premiere World digitally. In relation to its digital service, Premiere has already (in October 1999) signed a contract with Deutsche Netzmarketing GmbH (NMG), under

which cable operators will be paid a fee depending on the channel's scope of distribution and number of subscribers.

Vergleich zwischen ANGA und Premiere (nicht veröffentlicht)

Settlement between ANGA and Premiere (unpublished)

Urteil des Bundesgerichtshofs vom 19. März 1996 –KZR 1/95

Ruling of the Federal Supreme Court, 19 March 1996 - KZR 1/95

IRIS 2001-5:1/8 [DE] “Self-Advertising Channels” Declared Harmless

Iris Freis
Institute of European Media Law (EMR), Saarbrücken/Brussels

By granting national broadcasting licences to three so-called self-advertising TV channels, the Direktorenkonferenz der Landesmedienanstalten (Conference of Directors of the Land Media Authorities - DLM) has declared that Telekom-TV, Sparkassen-TV and Bahn-TV are not in breach of German media law. While Telekom-TV and Sparkassen-TV broadcast a mixture of self-advertising programmes and material from n-tv, available only on the premises of the companies concerned and their customers, Bahn-TV is planning to show purely self-advertising content.

All three channels are classified under media law as "Customer-TV" and can therefore be licensed as "selfadvertising channels".

TV stations aimed not at a fixed circle of viewers, but at all actual or potential customers of a particular company can be licensed as "self-advertising channels" because they constitute a form of "Customer-TV". While "Business-TV", a separate category, generally falls under the national Telediestegesetz (Teleservices Act), "Customer-TV" is subject to the Rundfunkstaatsvertrag (InterState Agreement on Broadcasting - RStV) or the Mediendienstestaatsvertrag (Inter-State Agreement on Media Services - MDStV) because it targets a wider audience and often contains (third-party) advertising.

Whether such a "Customer-TV" channel is subject to the RStV or the MDStV depends on its level of journalistic relevance which, taking all relevant factors into account, is determined by its impact, topicality and capacity for provoking thought. It is only classified as a media service not needing for a licence if its programme content serves "exclusively to promote directly the sales of goods or services" and thus has "no significant impact" on the formation of public opinion.

Whether "Customer-TV" channels are classified as broadcasting or media services is important because, according to the DLM, broadcasting services must meet the requirements for so-called "self-advertising channels", as set out in Section 45b of the RStV, and the corresponding advertising regulations. At the same time, the requirements concerning advertising content contained in Sections 7.1 and 8 of the RStV also apply to this form of self-advertising. However, other advertising restrictions, such as those limiting the amount or frequency of advertising, apply only to third-party advertising where "Customer-TV" is concerned.

Pressemitteilung der Arbeitsgemeinschaft der Landesmedienanstalten vom 20. März 2001

Press release of the Association of Land Media Authorities, 20 March 2001

FRANCE

IRIS 2001-5:1/9 [FR] Real TV under the Vigilant Eye of the CSA

Amélie Blocman
Légipresse

The concept of the now famous television programme "Big Brother", which first appeared in the Netherlands in September 1999 and has since spawned other programmes in both the United States and Europe, has been taken up in France by the terrestrially-broadcast Hertzian channel M6, which has just launched the programme "Loft Story". This first broadcast by Real TV in France proposes to following in real time the lives of 11 single people (6 young men and 5 young women) who have agree to being filmed twenty-four hours a day for seventy days, corresponding to a period of flat-sharing in a loft. The highlights of each day are broadcast on M6 daily in the early evening, while a channel in the TPS satellite package and an Internet site show "Loft Story" twentyfour hours a day.

The Conseil Supérieur de l'Audiovisuel (the audiovisual regulatory body - CSA) did not delay in making its reactions known. In a communiqué on 2 May, the CSA made a number of ethical recommendations to the channel, appealing to its management to "continue to show the greatest possible vigilance in order to avoid any faux pas which could infringe respect for the dignity of the human being". The CSA also asked M6 to make sure it would "avoid showing an excessive consumption of tobacco and alcohol, and respect the statutory and regulatory provisions in force". Going one step further, the CSA also stated its "concern that an approved terrestrially-broadcast channel could act as a loss leader for diversifications of the same programme on other supports for which a charge was made" and called on M6 to "put an end to the promotion of the broadcast of "Loft Story" on a satellite programme and an Internet site". The CSA has not, however, commented on the content of the programme accessible twenty-four hours a day on the TPS satellite package, as it has no responsibility in respect of this type of programme. The decrees implementing the Act of 1 August 2000, which established a system of prior approval for this type of broadcast, have still not been published. The same applied to the Internet site, as the CSA has no responsibility in this area. Although it has no formal regulatory power, this communiqué should no doubt be taken into account by the M6 channel, which is in fact currently renegotiating the renewal of its approval by the CSA for a further five-year period.

Communiqué n° 448 du CSA du 2 mai 2001

Communiqué no. 448 by the CSA, 2 May 2001

UNITED KINGDOM

IRIS 2001-5:1/10 [GB] “Contracts with Viewers” Published

David Goldberg
deeJgee Research/Consultancy

Programme policy statements on behalf of ITV, Channel 4, Channel 5, GMTV and the Channel 3 licensees have just been published. They are popularly known as "viewers' contracts". Such statements are envisaged in the Government's White Paper, "A New Future for Communications", as part of the move towards greater self-regulation (IRIS 2001-1: 8 and IRIS 2001-3: 12). A "three-tier" structure for the system of regulation is discussed in section 5.1 of the White Paper. It says that "[W]e will require the public service broadcasters to develop detailed statements of programme policy and regulatory arrangements that will give confidence that this new system will be effective". The White Paper's proposals are currently being transformed into the Communications Bill, which may become law by 2003. The statements set out "how broadcasters will carry out their public service commitments to viewers over the coming year" with respect to the range and diversity of programming (the so-called "qualitative elements" of public service broadcasting). Thus, Channel 5's statement regarding its output states that it "provides a point of difference in style and in content to that of other broadcasters". Channel 4's statement regarding its general aim reads "[W]e will use our reputation for risk and non-conformism to engage a younger generation in the values of public service broadcasting". The ITV statement regarding sports coverage says that its policy is to "make the top sporting events available live and free to the widest possible audience [...] regardless of their ability or willingness to pay".

The broadcasters themselves will review their own performance at the end of the year and the Independent Television Commission will monitor performance against the statements throughout the year and publish its findings as a part of its Annual Report and Accounts. Depending on the terms of the future law, the proposed new regulator, OFCOM, will also monitor the statements and the licensee's performance, with powers (to be determined) in the event of a licensee's failure to deliver what it had promised in its statement. In the first year, OFCOM may simply report on what it finds. Subsequently, if it finds that there is a "major and persistent" difference between what was promised and what is delivered, it could implement its range of sanctions - fines; the shortening of the licence period; or the revocation of the licence.

However, it may be still be arguable whether the statements per se are legally binding, as compared to the licence terms, of which they are a manifestation.

Independent Television Commission, Press Release No. 20/01 of 23 April 2001: "Public Service Broadcasters Issue Statements Of Programme Commitment To Viewers"

CROATIA

IRIS 2001-5:1/11 [HR] New Law on Radiotelevision

Kresimir Macan
HRT, Croatian Radiotelevision, Zagreb

On 8 February 2001 the Croatian Parliament passed the new Zakon o Hrvatskoj radiotelevizji (Law on Croatian Radiotelevision - HRT) and is about to significantly change the TV landscape in Croatia from 2002 onwards. The new Law states that the public broadcaster HRT shall privatise its third network within one year, while its section Odasilja´ci i veze (Transmitters and Links) will become a separate state owned public company by 1 January 2002. The Law also plans a further division of HRT in Hrvatska televizija (Croatian Television) and Hrvatski radio (Croatian Radio) by 1 July 2002. HRT will also change its legal format from a "public company" (a legal form similar to shareholder companies) to a "public institution", which will be 100% state owned and under the supervision of Croatian Parliament. The HRT will be supervised and managed by the following bodies: Vije´ce HRT-a (HRT Council), Upravno vije´ce HRT-a (HRT Board of Management) and Ravnatelj HRT-a (Director of the HRT).

The HRT Council will represent and protect the interests of the television and radio public regarding the production and supervision of programming. It will consist of 25 members appointed by various public institutions (Universities, Croatian Academy of Science and Arts, Unions etc). The President of Croatia, the Prime Minister and the President of Croatian Parliament will appoint 3 out of the 25 members of the Council. Neither members of parliament nor other state officials are allowed to be members of HRT Council or of the Board of Management. The HRT Council will have the right to make recommendations to the HRT Board of Management regarding the appointment and the dismissal of the Director of HRT, and will appoint or dismiss the editors-in-chief of Croatian Radio and of Croatian Television with the prior consent of HRT Board of Management.

The business affairs of HRT shall be undertaken by the Board of Management, which shall have 7 members appointed by the Zastupnicki dom (The House of Representatives) of the Croatian Parliament. One member must be chosen from among HRT employees and the remaining 6 members from among economic, financial and legal experts, cultural workers and media experts. The Board of Management appoints the Director of HRT as well as the Assistant Directors upon the Director's proposal. At least once a year the HRT Council and the Board of Management will have to submit a report on their work to the House of Representatives of the Croatian Parliament.

The Director of the HRT represents the HRT and is responsible for the lawfulness and success of the HRT's work. He will be appointed for a term of four years and may be relieved of his duties before the end of that period only if he fails to carry out his obligations.

The majority of the television programming has to be of domestic and European production, without neglecting Croatian programs. At least 10% of the total television programs broadcast except news bulletins, sporting events, game shows and commercials, shall be commissioned by the HRT from independent production companies. The duration of advertising messages in every HRT program must not exceed 9 minutes per hour of the program while teleshopping is not allowed. Two or more advertising messages (advertising block) may be broadcast only between separate programs. The news, religious, children programs, programs lasting less than 30 minutes and feature films cannot be interrupted by advertising messages. The HRT shall not broadcast advertising messages on behalf of political parties, religious communities and trade unions. The prohibition on the broadcast of advertising by political parties shall not apply during electoral campaigns.

Owners of radio and TV receivers in the territory of the Republic of Croatia shall be obliged to pay a fee to finance the HRT. The amount of the fee shall be 1.5% of the average monthly net income of employees in the Republic of Croatia, based on statistical data for the previous year.

Zakon o Hrvatskoj Radioteleviziji, Narodne novine br. 17/2001 02.03.2001

Law on Croatian Radiotelevision, Official Gazette No. 17/2001 2 March 2001

SWEDEN

IRIS 2001-5:1/12 [SE] Market Court Bans Pokémon-Rap

Sabina Martelleur
Legal Adviser, Swedish Broadcasting Commission

During the spring and summer of 2000 the Swedish national terrestrial channel TV4 broadcast more than ten programmes from the very popular children's series "Pokémon". When an episode was finished - and the message "to be continued" had been shown - the viewers were requested to keep their seats: "Don't leave yet. Now follows the Pokémon-rap". In this rap a selection of characters from the series are presented and the message "Gotta catch' em all" is repeated several times. When the rap is finished the programme ends with a billboard and the "Pokémon song".

The Swedish Broadcasting Commission found in a decision in May last year that the "Pokémon-rap" was designed in such a way that it appeared to be an advertisement for the "Pokémon" characters. This was in breach of several provisions of Swedish broadcasting regulation - placement of advertising etc. The Commission consequently asked Länsrätten (the County Administrative Court) to fine the company SEK 200,000 (USD 20,000). That case is still pending.

In Sweden TV-commercials targeted at children under the age of twelve are prohibited. The question of whether or not the "Pokémon-rap" is to be regarded as such an advertisement is a matter for the Consumer Ombudsman and Marknadsdomstolen (the Market Court). The Ombudsman brought the case before the Court, which issued a preliminary injunction last June. It is this case that has now been closed.

The Market Court found (March 2001) that the rap is a separate and strictly commercial part of the programme. The "Pokémon-rap" is an advertisement for the cards as well as for other products related to the "Pokémon" characters. The Court further found that the broadcaster had contributed significantly to the marketing of "Pokémon" related products. Consequently, in accordance with the provisions in the Swedish Market Act, the broadcaster in question - national commercial TV-channel TV4 - was prohibited from broadcasting the "Pokémon-rap". If the company breaks this ban a fine of SEK 200,000 (USD 20,000) may be imposed.

Judgement of the Market Court (DOM) 27 March 2001, 2001:8

Judgement of the Market Court (DOM) 27 March 2001, 2001:8

UKRAINE

IRIS 2001-5:1/13 [UA] Broadcast Licensing Regulation

Yana Sklyarova
Moscow Media Law and Policy Centre

On 12 September 2000 the Ukrainian National Council on Television and Radio Broadcasting (the independent regulatory body in the broadcasting field) approved a Regulation "On the order of licensing of broadcast channels". The Regulation establishes the legal framework for a licensing procedure, which is the main instrument of implementation of the 1993 statute "On television and radio broadcasting". The statute gives the Council an exclusive right to grant licenses and to specify licensing procedures, as well as terms and conditions for the use of the electromagnetic spectrum.

The Regulation introduces a competition procedure as the only method of assigning licenses to the applicants. The Council is entitled to organize competitions and to set all threshold terms and conditions, as well as comparative criteria for selecting the winner.

The Regulation specifies the application data that should be submitted for a competition. Notable in this list is the applicant's program concept, which briefly describes the suggested program schedule and indicates the size of the shares of domestic and foreign programming in overall broadcasting time, as well as the amount of programs produced by the broadcaster. The program concept shall be specifically arranged to reflect the interests of the audience and promote national cultural and social values. The concepts shall be evaluated in accordance with the competition criteria. An important factor in determining the winner shall be the applicant's past record.

The Regulation imposes a number of requirements on broadcasters' operations, such as an obligation to apply to the regulatory body for re-issue of the license in case of any changes in the data and characteristics laid down in the license.

The Council is entitled to revoke or suspend licenses though the Regulation does not contain an exhaustive or complete list of legal reasons for such an action, but refers only to provisions of the statute "On television and radio broadcasting". The latter penalizes the breach of a number of content requirements (Art.2), failure to air the minimum required share of national programs (Art.8), etc. Neither the Regulation nor the statute clearly defines the offences and the Council may impose different sanctions on the basis of its own evaluation of the gravity of the committed offence. While the Council on its own has power to suspend a license, its decision on revocation of a license comes into force only after a court verdict. Provisional suspension of a license does not involve postponing its expiry date. The Council may not penalize broadcasters if violations occurred due to circumstances not under the control of the licensee.

Polozhennya pro poryadok litsenzuvannya kanaliv movlennya, Ofitsiynyi visnyk Ukrainy, #1-2, 2001

Regulation "On the order of licensing of broadcasting channels" was approved by the Decision of the National Council on Television and Radio Broadcasting #12 of 28 September 2000, officially registered in the Ministry of Justice on 28 December 2000 (#963/5184), and officially published in the Official bulletin of Ukraine, #1-2, 2001

IRIS 2001-5:1/15 [UA] Provisional Regulation on the Cable Re-Transmission of Broadcast Channels

Yana Sklyarova
Moscow Media Law and Policy Centre

On 15 March 2001, a Provisional Regulation on the retransmission of broadcast channels by cable television networks was adopted by the National Council on Television and Radio Broadcasting (the Council), which specifies licensing procedures for the operation of cable television and re-transmission networks. This document divides the authority to regulate these matters between the Council and the governmental departments in the communications field. It generally follows the provisions of the 1993 statute "On television and radio broadcasting" and existing regulations on communication.

The Regulation establishes a provisional procedure for the licensing of cable networks operators and cable TV companies in Ukraine. Licenses shall be issued by the Council on a competitive basis after an applicant obtains an authorization from the municipal government to build a cable network.

Applicants should submit to the Council a technical proposal for construction of the cable television network, as well as the required statements that they have the financial resources necessary for maintaining operations.

In drawing up its programming schedule an applicant shall follow the specific restrictions included in the Regulation. They provide for compulsory carriage of the licensed terrestrial channels available in the zone served by the cable operator. The list of such channels shall be approved by the Council as an essential part of the license. Cable network operators are entitled to carry programs from foreign broadcasters, provided that copyright protection requirements and international standards for television advertising are met.

An applicant must pay a fee for the issuance of a license; the amount depends on the potential audience to be covered by the license, cable network proposed channel capacity and minimum wage level. A cable operator must pay 30 percent of the fee within 30 days after the Council's decision to issue the license and the remaining 70 percent within a year of obtaining the license. If an operator fails to pay the entire amount of the fee during this period, then the Council may apply to the court for the revocation of the license.

The Regulation also introduces anti-monopoly requirements for cable television companies, as it limits the maximum audience served by one company to 10 percent of the Ukrainian population or 30 percent of the potential audience in Kiev and other major cities.

Tymchasove polozhennya pro poryadok retranslyatsii (translyatsii) telekanaliv v merezhah kabel'nogo, efirno-kabel'nogo telebachennya, #33 of 15 March 2001. Hovoryt i

pokazue Ukraina, 5 April 2001

Provisional Regulation on the retransmission of broadcast channels by cable television networks, approved by the decision of the National Council on Television and Radio Broadcasting, #33 of 15 March 2001. Published in Hovoryt i pokazue Ukraina weekly, 5 April 2001

IRIS 2001-5:1/14 [UA] Regulation on Licensing Competitions

Yana Sklyarova
Moscow Media Law and Policy Centre

On 23 November 2000, the National Council on Television and Radio Broadcasting approved the Regulation "On terms and conditions of the competitions for obtaining broadcasting licenses". It is designed to introduce the competition procedure for granting broadcasting licenses. The Regulation sets out the necessary legal framework for carrying out competitions to guarantee equal opportunities for all applicants. The Council is responsible for the implementation of the procedure.

The Regulation establishes within the Council's existing structure a new expert body - an Expert Commission, authorized to analyze and compare submitted applications and advise the Council on a final decision. This advisory body shall be comprised of leading experts in journalism, sociology, law, and broadcasting technology. The Council shall finalize an entire panel of the Expert Commission for each competition within a week after its announcement.

According to the Regulation, applicants must submit documents to the Council which meet the general requirements for such applications as outlined in Art. 14 of the 1993 Statute "on Broadcasting". However, the Regulation imposes additional requirements to enable the regulatory body to compare the applicants' concepts. Para. 2.4 of the Regulation establishes a minimum amount of daily programming (14 hours a day) for those wishing to be assigned a frequency. The Council may stipulate other "special conditions" for using a particular broadcast channel in regard to programming, technical and financial matters, including specific programming obligations reflecting its format and the interests of a particular audience. When a winner is chosen the Council approves such a set of "special conditions" as an essential part of the license guidelines for broadcaster's further activity.

During the hearings that are part of the competition procedure, the Expert Commission may recommend that the applicants perform an experimental broadcast or prepare pilot programs, as well as present additional evidence of their qualifications (diplomas, awards etc.) The Commission's meetings during the hearings are open; thus, all the interested parties are invited to be present. Their opinions should be later attached to the protocol of the hearings, which articulates the final position of the Expert Commission.

After the Council's decision, the winner is to obtain a license for the use of communications equipment from the State Committee on Communications (Goskomsvyaz, the executive regulatory body in communications field), and to be listed in the State Register of companies involved in informational activity; otherwise, the Council shall cancel the results of the competition and repeat the competition process.

Ob usloviyakh konkursa na poluchenie litsenzii, Golos Ukrainy daily, #222 (2469), 1 December 2000

Regulation on terms and conditions of the competitions for obtaining license to broadcast, adopted by the decision of the National Council on Television and Radio Broadcasting on 23 November, 2000, published in Russian and Ukrainian on 1 December 2000 in Golos Ukrainy daily, #222 (2469)

COUNCIL OF EUROPE

IRIS 2001-5:1/2 Parliamentary Assembly Supports Draft Cyber-Crime Convention

Lodewijk Asscher & Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

In its Opinion No. 226 of 24 April 2001, the Parliamentary Assembly of the Council of Europe expressed its support for the latest version of a draft Convention on Cyber-crime. The Draft Convention was prepared by a Committee of Experts, which formally concluded its work with the completion of Draft No. 25 of the Convention in December 2000.

The Draft Convention requires States Parties to adopt certain substantive criminal offences, i.e. crimes against the confidentiality, integrity and availability of computer data, systems and communications (Articles 2-5); crimes involving the use of a computer system for their commission, most notably computer-related forgery and fraud, as well as offences related to child pornography (Articles 7-9) and the crime of copyright infringement through the use of computers (Article 10).

The Draft Convention also insists upon the adoption of procedural laws and other measures providing for government investigative powers in regard to computerrelated crime: government orders to freeze information stored in any computer (Articles 16-17); government access to information stored in computers, through production orders for any stored data and for any information identifying subscribers to computer communications systems (Article 18); search and seizure of computers and computerised data (Article 19); real-time interception applicable to all communications systems, including telephone networks, for all kinds of crimes and, in the case of content interception, for all kinds of serious crimes (Articles 20-21).

Another section of the Draft Convention binds States Parties to cooperate in collecting evidence and intercepting communications across borders. This section concerns requests to preserve records stored in a computer system (Article 29); to disclose records (Article 30); to conduct searches and seizures of computers (Article 31); to carry out real-time interceptions of transactional data and of the content of communications (Articles 33 and 34).

The absence in the Draft Convention of any provisions dealing with, inter alia, the dissemination of racist and xenophobic speech over the Internet, prompted the inclusion in Opinion No. 226 of a call for the immediate drafting of a protocol thereto. Such a protocol, to be titled "Broadening the scope of the convention to include new forms of offence", would have the objective of "defining

and criminalising the dissemination of racist propaganda, abusive storage of hateful messages, use of the Internet for trafficking in human beings, and the obstruction of the functioning of computer systems by "spamming" (sending "junk e-mail")."

Further changes may yet be made in response to Opinion No. 226 of the Parliamentary Assembly, by the Council's European Committee on Crime Problems and then by the Committee of Ministers, which is expected to act on this draft convention in July or September 2001.

Draft Convention on Cyber-crime (Draft No. 25 REV)

Council of Europe Parliamentary Assembly Opinion No. 226

EUROPEAN UNION

IRIS 2001-5:1/3 Council of the European Union: Directive on Copyright in the Information Society Adopted

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

On 9 April 2001, the Council of the European Union adopted the Directive on the harmonisation of certain aspects of copyright and related rights in the Information Society. The Council approved all amendments introduced at the second reading by the European Parliament (see IRIS 2001-3: 3, IRIS 2000-7: 3, IRIS 2000-2: 15, IRIS 1999-6: 4 and IRIS 1998-1: 4). The Directive must now be transposed into national law by Member States within 18 months of its publication in the Official Journal. After that, the Community and its Member States will be able to ratify the WIPO Copyright Treaty and the WIPO Phonograms and Performances Treaty, which were adopted by WIPO in 1996 (see IRIS 2000-2: 15 and IRIS 1997-1: 5).

2342nd Council meeting (General Affairs), Press Release of 9 April 2001

http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/01/141&format=HTML&aged=1&language=EN&

IRIS 2001-5:1/5 European Commission: Legal Aspects Relating to Audiovisual Works

Susanne Nikoltchev
European Audiovisual Observatory

In order to promote discussion on legal aspects relating to cinematographic and other audiovisual works, on 11 April 2001 the European Commission published a working paper following on from its Communication on the principles and guidelines for the Community's audiovisual policy in the digital age (COM (1999) 657 final, 14 December 1999, see IRIS 2001-1: 5 and IRIS 2000-8: 4). In the working paper, the Commission mainly focuses on the growth of the audiovisual sector, in particular cinema, and the development of a competitive European film industry. It presents various thoughts and questions on the distribution of European audiovisual works and on the availability of film-making services in the light of current market and technological developments. It deals especially with the impact of digital technology on distribution networks (eg the Internet) and the exploitation chain. The Commission is also keen, by means of broad discussion of these themes, to adopt Community-wide regulations based on the "Television Without Frontiers" Directive, the Media Plus Programme, the i2i-audiovisual initiative and Eurimages.

The working paper attempts to devise a coherent definition of "European works" and "independent producers". It also discusses the protection of the heritage of audiovisual works, the legal registration of films, the possibility of creating a database of the distribution of rights and licensing agreements across the European Union, the exploitation of audiovisual content (including on-line rights and particularly the chronology of windows for economic exploitation and Community-wide harmonisation of such exploitation), the handling of on-line rights (particularly the multiple exploitation of content and the need to remove the distinction between cinematographic and other audiovisual works), the standardisation of e-cinema, tax issues and the harmonisation of existing rating systems (eg for the protection of minors).

The Commission does not deal with issues concerning copyright and related rights insofar as these already fall within the scope of European law, ie the EC Copyright Directive (see IRIS 2001-5: 3) and the WIPO agreements (see IRIS 2000-2: 15). Neither does it mention state aid for the film sector (see, however, IRIS plus, appended to IRIS 2001-4, and IRIS 2001-2: 3), concerning which the Commission intends to issue a special Communication in the second half of this year.

In publishing the working paper, the Commission opened a three-month consultation period, which will include a public hearing in June.

Commission Staff Working Paper on Certain Legal Aspects Relating to Cinematographic and Other Audiovisual Works, 11 April 2001, SEC (2001) 619

http://ec.europa.eu/avpolicy/docs/reg/cinema/cinedoc_en.pdf

IRIS 2001-5:1/4 European Commission: UEFA Broadcasting Regulations Approved

Caroline Hilger
Saarbrücken

The Commission has approved the rules on the broadcasting of football matches as amended in July 2000 by the Union of European Football Association (UEFA).

The Broadcasting Regulations, which were first introduced by UEFA in 1988, had already been amended several times because of strong opposition from various broadcasters and yet had been the subject of repeated complaints brought before the Commission.

The complainants claimed that the regulations restricted competition. At first, the Commission agreed, stating on 16 July 1998 that the Broadcasting Regulations as they stood breached Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. Unless they were amended, they would also infringe Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement. As a result, UEFA amended the regulations again. In the Commission's view, the new provisions, as amended in July 2000, now lie outside the scope of competition rules, since they represent a significant improvement both in terms of the scope of restrictions on the broadcasting of matches at weekends and in terms of procedure.

National football associations are now allowed to block the broadcasting of football matches during two and a half hours on Saturdays or Sundays. The rules provide national football associations with the opportunity to schedule broadcasts of domestic football matches at times when the simultaneous broadcasting of football is not liable to interfere with stadium attendance and amateur participation in the sport. This means that at times broadcasters may be deprived of the possibility to broadcast football events live. However, the Commission reached the conclusion that this effect did not constitute an appreciable restriction of competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. The Commission also thought that the UEFA Broadcasting Regulations would not at present appreciably restrict technological and economic developments in the Internet sector, although it reserved the right to intervene if new developments were brought to its attention.

However, the Commission's decision on the UEFA Broadcasting Rules does not prejudice the assessment of the joint selling of broadcasting rights by national football associations, which is still being examined under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

European Commission press release, 20 April 2001 (IP/01/583)

http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/583&format=HTML&aged=1&language=EN&gui

UEFA Broadcasting Regulations

UNITED KINGDOM

IRIS 2001-5:1/6 European Commission: Evaluation Report on Protection of Minors and Human Dignity

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

On 27 February 2001, the European Commission adopted an Evaluation Report on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity (see IRIS 1998-10: 5). The Evaluation Report was compiled and presented to the European Parliament and the Council pursuant to Section III, Paragraph 4 of the Recommendation.

The Council Recommendation favours research into, and the adoption of, voluntary measures by broadcasters in Member States, aimed at protecting minors and informing audiences, \"as a supplement to the national and Community regulatory frameworks covering broadcasts.\" The Recommendation is also attentive to the development, by the Industry and other interested parties, of positive measures for the benefit of minors, which would, inter alia, broaden access to audiovisual services whilst avoiding the risk of encountering potentially harmful material. These and other priorities guide the analysis of audiovisual matters provided by the Evaluation Report, which draws heavily on, inter alia, feed-back received from a specially-drafted Questionnaire addressed to Member States; the Study on Parental Control of Television Broadcasting (March 1999), drawn up by the Oxford University Centre for Socio-Legal Studies for the Commission (IRIS 1999-4: 4); the Commission Communication on this Study (COM (1999) 371 final) and the resultant European Parliament Resolution (A5-0258/2000), as well as the Commission\'s consultations with the Digital Video Broadcasting Consortium (DVB).

The Report\'s assessment of the application of the Recommendation to date is positive, notwithstanding the heterogeneous manner in which it has been applied in different Member States. Such differences of approach mirror cultural heterogeneity and different levels of development of new technologies in Member States. The Report is, however, critical of the fact that interested parties (especially consumers) were not more involved in the process of elaborating relevant codes of conduct. It advocates extensive consultations as a means of achieving the objective of greater coherence of approach; an objective determined by trends of ever-increasing convergence.

Although the Recommendation is not directly linked to the \"Television without Frontiers\" Directive, the importance of the conclusions of the Evaluation Report is their potential to influence the drafting of a possible new directive, which would be specifically concerned with the protection of minors and human dignity in the context of electronic communications.

Evaluation Report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, COM (2001) 106 final, 27 February 2001

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52001DC0106:EN:HTML

FILM

UNITED KINGDOM

IRIS 2001-5:1/16 [GB] Tax Relief for the Film Industry Extended

Tony Prosser
University of Bristol Law School

As part of his budget proposals, the British Chancellor of the Exchequer (the Minister for public finance and taxation) announced that tax relief for the film production industry is to be extended until 2005.

The UK currently has three types of tax relief for film production. The most generous form of relief is known as `section 48 relief', having been introduced by that section of the Finance (No. 2) Act 1997, in order to promote growth, employment and investment and assist structural change in the UK film industry. It allows for 100% write-off for tax purposes, on completion, of the production and acquisition costs of "British qualifying" films whose budgets do not exceed GBP 15 million. Films are certified as "British qualifying" by the Department for Culture, Media and Sport if they meet certain criteria, including 70% of the cost of the film being spent on film activity in the UK.

The relief was introduced in 1997 to run for three years, and was then extended to 1 July 2002. Legislation will now be introduced to extend the end-date to 1 July 2005.

This relief is supplemented by "section 42 relief", which permits the writing-off, over three years, of expenditure on British films with budgets in excess of GBP 15 million.

It has been estimated that in 1999/2000, approximately GBP 500 million of film production was generated through the application of section 48 relief, and that it has also led to new forms of financing through the use of equity partnerships. Section 42 relief has been instrumental in increasing inward investment into the UK film production sector from GBP 58 million in 1992 to GBP 539 million in 2000.

Extension of Film Tax Relief, HM Treasury Budget Press Release Rev 4, 7 March 2001

http://www.inlandrevenue.gov.uk/budget2001/rev4.pdf

RUSSIAN FEDERATION

IRIS 2001-5:1/17 [RU] Cinematography's Sphere Reorganized

Natalie Boudarina
Moscow Media Law and Policy Centre

On 4 April 2001, the President of the Russian Federation, Vladimir Putin, signed two decrees regarding cinematography.

The first Decree, "on reorganization of federal state film studios", aims at: (a) restructuring the cinematography industry; (b) guaranteeing the efficiency of film studio production; (c) safeguarding public interests; (d) observing the copyright law.

In order to achieve these objectives, the reorganization of the federal state's film studios will be carried out by singling out of a certain number of state enterprises, which will then be restructured in the form of joint-stock companies.

This Decree gives the Government the powers necessary to achieve the reorganization.

In addition, under this regulation the Government must provide for the protection of exclusive intellectual property rights that belong to the federal state film studios.

Film production shall be considered the primary activity of the enterprises being organized under the Decree.

The second Decree, "On the creation of an "open jointstock company" Russian Motion Film Distribution" provides for the creation of an open joint-stock company, the Russian Motion Film Distribution Co. Its main tasks are as follows: (a) ensuring public access to film and video works of great artistic merit, both domestic and foreign; (b) production and introduction of up-to-date techniques and technology of showing of cinema works on the basis of domestic developments; (c) creating effective means of financing a distribution system for domestic films.

Ukaz Prezidenta Rossiyskoi Federatsii "O reorganizatsii federalnykh gosudarstvennykh kinostudiy", Rossiyskaya gazeta daily on 7 April 2001

The President of the Russian Federation Decree "on reorganization of federal state film studios", Rossiyskaya gazeta of 7 April 2001

Ukaz Prezidenta Rossiskoy Federatzii “O sozdanii otkrytogo aktsionernogo obshestva

Rossiskiy Kinoprokat", Rossiyskaya gazeta daily of 7 April 2001

The President of the Russian Federation Decree "on creation of an open joint-stock company Russian Motion Film distribution, Co", Rossiyskaya gazeta daily of 7 April 2001

NATIONAL

GERMANY

IRIS 2001-5:1/24 [DE] Development on the Franco-German "Mini-Treaty"

Meike Ridinger
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 17 May 2001, Germany and France signed a treaty in Cannes on the provision of support for co-produced films (the so-called "Mini-Treaty"), which entered into force on 23 November 2001 (see IRIS 2004-10:Extra). This was the basis for the establishment of a Franco-German co-production fund, which has an annual budget of EUR three million and to which France and Germany have equal access.

Since then, the number of Franco-German co-productions has risen considerably. Whereas between 1994 and 1999 the figure was between one and five films per year, it jumped sharply after the signing of the Mini-Treaty. Since 2002, 47 mainly French and 23 mainly German co-productions have been made. Between 2002 and 2006, the number of co-productions stabilised at around ten a year. A further increase in 2007 can be put down to the creation of the DFFF (Deutscher FilmFörderFond, German Film Support Fond), which started operations on 1 January 2007 and has a budget of EUR 180 million over three years (see IRIS 2007-1: 3 and IRIS 2006-8: 12). 17 Franco-German co-productions were made in 2007 and this level was maintained in 2008. To date, there has been a higher proportion of French productions.

Agreement for the provision of support for co-produced films ("Mini-Treaty"), available at:

Further information on the development of Franco-German co-productions

NEW MEDIA/TECHNOLOGIES

AUSTRIA

IRIS 2001-5:1/18 [AT] Supreme Court Rules on Hyperlink Liability

Albrecht Haller
IFPI Austria

Having previously decided (albeit with no legal basis) that, under copyright law, someone who sets up a hyperlink actually reproduces the "linked-in" contents (see IRIS 2000-7: 9), the Oberster Gerichtshof (Supreme Court - OGH) recently dealt expressly with the question of liability for hyperlinks from a competition law point of view for the very first time.

The facts of the case are as follows: the first plaintiff is the publisher of the Kurier daily newspaper and the second plaintiff is its subsidiary, which deals with advertising. The defendant, an employment agent working in the field of staff recruitment, runs the website www.austropersonal.com, which contains job advertisements for various companies and hyperlinks to the website of an American company (www.jobmonitor.com). The American website also displays job advertisements for different firms, some of which are taken from the Kurier or its online edition.

The plaintiffs applied for a temporary injunction, banning the defendant from promoting foreign competition (ie from the American company) by providing a direct link from the text stored on its website www.austropersonal.com to the website www.jobmonitor.com, where job advertisements taken from the Kurier daily newspaper or its on-line edition (www.kurier.at) were displayed without the permission of the advertisers concerned. The plaintiffs based their application on Sections 1 (immorality) and 2 (misleading advertising) of the Bundesgesetz gegen den unlauteren Wettbewerb (Federal Act against unfair competition - UWG).

Whereas both lower courts decided that the American firm had not acted unfairly, the Supreme Court considered that copying advertisements from the Kurier more or less word-for-word constituted immoral sponging a third party and was thus inadmissible under Section 1 of the UWG. With regard to the defendant's liability for providing a link to the American company's unlawful website, the Supreme Court ruled that "unlike a simple service provider, for example [...], someone who includes a link on his website incorporates into his own website the content of the "linked-in" website in such a real and physical way that it actually becomes a part of it [...]. He is therefore responsible for the content of the "linked-in" website. "The Court deliberately did not clarify whether the same principles also apply to hyperlinks which, unlike in the present case, do not replace a site's own content, but merely serve as pointers (eg lists of links).

Beschluss des Obersten Gerichtshofs vom 19. Dezember 2000, Aktenzeichen 4 Ob 225/00t

Judgment of the Supreme Court of 19 December 2000, file no. 4 Ob 225/00t

FRANCE

IRIS 2001-5:1/20 [FR] Bill on the Information Society to Be Presented at Cabinet Meeting Soon

Amélie Blocman
Légipresse

The never-ending story of the Bill on the Information Society (see IRIS 1999-8: 4) seems to have moved into a decisive stage this month. After a final round of inter-ministerial arbitration, Christian Pierret, the Secretary of State for Industry, signed an almost definitive version of the text which should be presented in a meeting of the Cabinet in June, after obtaining consultative opinions from the administrative authorities (CSA, CNIL, ART, etc).

The purpose of the Bill is more particularly to transpose into French law the Directive of 8 June 2000 on e-commerce; the stated aim of the Bill is "to ensure that our legal rules are adapted to the Information Society", but without creating specific legislation applicable only to digital networks and content. In its present state, the text is divided into five sections. The first covers access to information and more particularly to public data and archives. The Bill provides for making available to the public certain collected data of a public nature, for which a charge might be made, except for data of an essential nature, which are defined in detail in the Bill. There is also a provision extending the principle of the statutory depositing of texts to on-line communication services. The second section covers freedom of on-line communication, considered by the Bill as a sub-group of audiovisual communication. In this respect, the text provides for the amendment of the Act of 30 September 1986 in order to create a right of reply specific to on-line communication services. The provisions concerning the liability of technical intermediaries introduced by the Act of 1 August 2000 are also supplemented in line with the provisions of the Directive on e-commerce. Thus hosts could be held liable if, once they actually have knowledge of the manifestly unlawful nature of any content they host, they do not take prompt action to withdraw it or make it impossible to access; there is no longer any reference to their criminal liability. The text also releases access providers and hosts from the obligation to supervise the information they transmit or store. Chapter III covers e-commerce, the means of validating an electronic contract, and contains a provision regulating spamming. Thus individuals who do not wish to receive unsolicited advertising via electronic means may ask to be included on a special list. Chapter IV covers access to the network, particularly for local communities; these may create telecommunication infrastructures. The final Chapter of the bill covers security in the information society and provides for liberalising the use of cryptology, and increases the penalties for criminal acts involving information technology. Contrary to the original intention, the bill does not include any provisions concerning copyright.
The Conseil supérieur de la propriété littéraire et artistique (Higher Council for Literary and Artistic Property), which was to be set up on 11 May, will be required to draw up a report on the transposition of the Directive on Copyright and Neighbouring Rights in the Information Society. However, the Government will not wait for that report before presenting the bill on the

Information Society at a Cabinet meeting in June; indeed it hopes that the bill could receive its first reading in Parliament before the summer.

Projet de loi sur la société de l'information

Bill on the Information Society

IRIS 2001-5:1/19 [FR] Publication of the Implementing Decree on Electronic Signatures

Mathilde de Rocquigny
Légipresse

The Act of 13 March 2000 (see IRIS 2000-3: 12) has now amended the general provisions of the French Civil Code on literal proof by laying down the principle according to which "a document written on an electronic support has the same evidentiary value as a document written on a paper support". Article 1316-4 of the Civil Code contains new provisions on electronic signatures. According to paragraph 2, where a signature is "electronic, it consists of using a reliable identification process guaranteeing its link with the document to which it is attached. The reliability of the process is presumed, unless there is proof to the contrary, where the signature is created, the identity of the person signing and the integral nature of the document are guaranteed, under the conditions set by decree of the Council of State".

This implementing decree, of 30 March 2001, has just been published in the official journal. It lays down the conditions necessary for the validity of the electronic signature, which can thus be considered secure and can benefit from the presumption of reliability in the same way as a handwritten signature. The first condition for the validity of an electronic signature (section I) is that the hardware and software used for its creation must be certified by the bodies designated by an office authorised by the Prime Minister (Central Directorate for the Security of Information Systems). These bodies are to issue certificates of conformity, which will be made public. Article 3 of the Decree lays down two requirements, concerning firstly certainty as to the identity of the person signing, and secondly certainty as to the content being signed. To obtain certification, the hardware used for signature will be required to ensure that this cannot be falsified, that it is confidential, that it offers a satisfactory level of protection against any use by a third party, and that it must not be possible to alter the content of the document to be signed, while guaranteeing that the person signing the document is fully cognisant of the document in question. The Decree also states the conditions for checking an electronic signature (section II) and covers the content of "electronic certificates" guaranteeing the identity of the person signing a document. It sets out in detail the framework within which professionals (called "certification service providers") are to work; these professionals will issue the certificates (section III). This new text, which updates the law on proof in line with information technology, constitutes an initial step before the implementation of the full-scale Information Society Act, which will deal more particularly with e-commerce (see IRIS 2001-5: 14).

Décret n° 2001-272, 30 mars 2001. J.O. du 31 mars 2001

Decree no. 2001-272, 30 March 2001. Official Journal of 31 March 2001

IRELAND

IRIS 2001-5:1/21 [IE] Information Society Commission Issues Report

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

The Information Society Commission was established by the Irish Government in 1997 to monitor Ireland's progress as an Information Society, to promote awareness of new technology and to advise the government on Ireland's development in this area. Its third and most recent report, compiled in December 2000, assessed Ireland's current position and made recommendations for future development.

The Commission highlighted what had been achieved during the three-year period, including: the liberalisation of the telecommunications market, the enactment of the Electronic Commerce Act, 2000 (IRIS 2000-8: 11) and the Copyright and Related Rights Act, 2000 (IRIS 2000-8: 13), the increase in Ireland's international connectivity due to the Global Crossing cable project (an agreement between the Irish Government and the owners of the world's first global fibre-optic network to link Ireland with the US and 36 major European cities), Ireland's position as the largest software-exporting base in the world, and the increased awareness of information technologies in business, the public service and in the general community.

However, the Commission also identified major challenges that still have to be addressed, the most fundamental being: the slow move from awareness to adoption of new technology; the cost of communications services in Ireland is still too high; the local loop has yet to be unbundled; the introduction of digital television is behind schedule; broadband access is available unevenly throughout the country; there is a shortage of skilled workers in the high-technology sector, and there are differences among socio-economic groups in regard to access to, and use of, new technologies.

In order to meet these challenges, the Commission has developed a set of principles designed to ensure that the development of the Information Society progresses as a matter of urgency. As well as a number of general principles, the Commission also set out specific principles in regard to priority areas. These areas include: partnerships between industry and community groups to facilitate increased involvement in the Information Society, encouraging Irish business to use e-business, making high-speed, low cost networks available in every part of the country, and providing an appropriate legislative framework that will facilitate the development of a progressive and inclusive Information Society.

Third Report of Ireland's Information Society Commission, December 2000

OSCE

IRIS 2001-5:1/1 Recommendations on Broadening Access to New Technologies

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

The first of the three OSCE Supplementary Human Dimension Meetings scheduled for 2001 was held in Vienna on 12-13 March. Its theme was "Freedom of Expression: New and Existing Challenges".

The meeting was divided into three working sessions, dealing with legal and non-legal frameworks, including criminal defamation laws; the role of free speech in advancing the objectives of the OSCE, and broadening access to new information technologies. Recommendations were adopted on each of these themes, and those concerning new information technologies will be examined here.

Foremost amongst the recommendations addressed to the OSCE participating States was an insistence that access to new information technologies, in particular the Internet, be democratised. To this end, it was urged that access be developed in public places, such as libraries, universities and post offices. Proactive policies should be devised and implemented to promote the use of Internet services and the development of new technologies. These policies could be consolidated by the necessary training of individuals. Diversity of content, especially in cultural and linguistic terms, should also be ensured. Good governance should be enhanced by the continued ascendancy of new technologies and the training of officials would form an integral part of this redoubled espousal of open government.

Equality of access to all operators was recommended, as was the limitation of risks of control through proprietary technology. The issue of regulation of the Internet gave rise to divergent recommendations. Some participants advocated regulating information available on the Internet in accordance with the guiding principles of Article 10 ECHR. Others favoured co-regulation, which is joint action between Internet Service Providers and Governments to stop banned content and to prevent access by minors to unsuitable material. Many participants also recommended that only the end-user should be entitled to regulate content. It was further suggested that the Internet could play a role in the promotion of inter-ethnic relations in post-conflict situations.

The fulcrum of the recommendations addressed to the OSCE institutions and field presences was the exploitation of the Internet's potential for enhancing democracy and promoting human rights.

Standard-setting with a view to preventing the existence of national monopolies of both incoming and outgoing communication was also called for. It was recommended that all OSCE instruments be published on-line and that the Representative on 5 5 5 Freedom of the Media should disseminate all reviews of Freedom of Information legislation and perhaps create a database of such information. A crucial recommendation was for OSCE field presences to provide legal and technical training for NGOs and other interested parties in new technologies. Central Asia was singled out as a priority area for the provision of such training.

Recommendations adopted at OSCE Supplementary Human Dimension Meetings lack official status; they are not consensual and do not necessarily reflect the views or policies of the Organization. Their value is that they emerged from a consultative exercise involving a broad spectrum of interested parties from throughout the OSCE participating States. As such, they are likely to prove instructive in the formulation of future priorities, policies and strategies, as well as furnishing the Organization with a useful catalogue of issues to be addressed in its follow-up procedures to the Vienna meeting.

Final Report, OSCE Supplementary Human Dimension Meeting - Freedom of Expression: New and Existing Challenges, Vienna, 12-13 March 2001

RELATED FIELDS OF LAW

ROMANIA

IRIS 2001-5:1/22 [RO] New Media and Information Legislation

Mariana Stoican
Journalist, Bucharest

The proposal for an Act designed to guarantee public access to information has been approved by the new Cabinet and media representatives. A corresponding bill, drafted in collaboration with opposition party representatives by the new Ministry for Public Information, which was created in early 2001, was submitted to Parliament. The Bill was examined and approved by Parliament in mid-April and will now be debated by the Senate over the next few weeks. The Act on free access to information of public interest is designed to regulate how every citizen should enjoy equal access to such information. It provides for sanctions for civil servants who breach the Act's provisions. Information concerning defence, national security and law and order is not freely accessible insofar as it constitutes "classified information"; the same applies to certain "classified information" of economic and political significance. Access to personal or other data that could infringe the rights of minors is also restricted. Responsibility for protecting this kind of information lies with the persons and authorities in possession of it. The Bill guarantees media access to information of public interest and, to this end, obliges public bodies and institutions to hold regular press conferences. The procedure for journalist accreditation is also set out in the new Bill. The authorities are only allowed to refuse or withdraw accreditation if a journalist's statements jeopardise the normal activities of the public institution concerned; however, they may not do so merely on account of opinions expressed in journalistic articles.

It should be noted that the Romanian Parliament adopted a draft Data Protection Act early in 2001. Among its provisions were tough penalties for journalists and citizens who obtain information that falls within the broad category of "secret" information. As a result of public criticism, the Bill was not published by the President and was temporarily suspended by the Constitutional Court on account of procedural flaws.

Legea privind liberul acces la informatia de interes public, 24 April 2001

Draft Act on free access to information of public interest, 24 April 2001

Legea privind protectia informatiilor clasificate

Act on the protection of classified information

SLOVENIA

IRIS 2001-5:1/23 [SI] Parliament Passed New Law on Telecommunications

Spela Strubelj
Slovenian Broadcasting Council

On 10 April 2001, the Drzavni zbor (Parliament) passed the new Zakon o telekomunikacijah (Law on Telecommunications). The Act aims to liberalize the telecommunications market by privatising the national leading and state-owned telecommunications operator, the Telekom. However, the most important change concerning the media is the merger of the two regulatory bodies for telecommunications and broadcasting. By establishing the new Agencija za telekomunikacije in radiodifuzijo (Agency for Telecommunications and Broadcasting), the existing Svet za radiodifuzijo Republike Slovenije (Slovenian Broadcasting Council) and Uprava Republike Slovenije za telekomunikacije (Telecommunications Administration) will be abolished in the forthcoming months due to the foundation of the Agency. For this reason, provisions within the Law regarding the Agency's internal organizational structure establish two advisory bodies (Telecommunications Council and Broadcasting Council). Both will consist of experts in the relevant legal sectors and shall be independent of day-today policy. Although both councils are of consultative nature, a distinction between them can be noted. The Broadcasting Council will have more a decision-making role as its proposals concerning frequency allocation and broadcasting licences, respectively, are binding upon the Agency. In regard to programming requirements the forthcoming Media Law will still be the legal basis for the decisions of the Broadcasting Council. Also previous specific provisions on nominating, appointing and dismissing the members of the Council are included in the draft Media Law.

The Agency itself is organised as an independent regulatory body. It will be financed indirectly from the state treasury through a special fund with contributions from different licence fees. The powers of the Agency will not be supervisory ones only, they also emphasize the creation of proper conditions for the development of the telecommunications market and the promotion of fair competition as well as ensuring equal access and safeguarding the principle of non-discrimination.

Zakon o telekomunikacijah

Law on Telecommunications

Predlog Zakona o medijih

Draft Media Law

A publication
of the European Audiovisual Observatory