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European Court of Human Rights: Case Thoma v. Luxembourg

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

In a judgment of 29 March 2001, the European Court of Human Rights once again recognised the importance of journalistic freedom in reporting on matters of public interest. Marc Thoma, a radio journalist working for *RTL*, alleged that his civil conviction for making a defamatory statement in a radio programme violated his right to freedom of expression. In that radio programme, he reported on alleged fraudulent practices in the field of reforestation work. These allegations were based on an article published in the newspaper *Tageblatt*. Following legal action by 63 Forestry Commission officials, the journalist was convicted of defamation by the Luxembourg courts.

The European Court held unanimously that there had been a violation of Article 10 of the European Convention on Human Rights. The Court recalled its general principles, emphasising the important role of the press in a democratic society. Although the European Court

recognised that some of the applicant's remarks were very serious and that the officials of the Water and Forestry Commission were indirectly identifiable, it noted at the same time that the issue raised in the radio programme had been widely debated in the Luxembourg media and concerned a problem of public interest.

In particular, the fact that Thoma had based his defamatory remarks on an article published by a fellow journalist was a decisive element in this case. The European Court reiterated that punishing a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to the discussion of matters of public interest and should not be envisaged unless there were particularly strong reasons for doing so. The Luxembourg courts had decided that a journalist who merely quoted from an article that had already been published would only escape liability if he formally distanced himself from that article. The European Court, however, is of the opinion that such a requirement for journalists to distance themselves systematically and formally from the content of a quotation that might defame or harm a third party was not reconcilable with the role of the press in providing information on current events, opinions and ideas. The Court noted that the applicant had taken the precaution of mentioning that he was quoting from a press article and that he had underlined that this article contained some "strongly worded" allegations. The Court also took into consideration the fact that the journalist had interviewed a third party, a woodlands owner, about whether he thought that the allegations of fraud in the reforestation sector were true. Under these circumstances, the Court was not sufficiently convinced that the conviction of the applicant was necessary in a democratic society in order to protect the reputation and rights of others. ■

Judgment by the European Court of Human Rights (Second Section), Case Thoma v. Luxembourg, Application no. 38432/97 of 29 March 2001. Available on the ECHR's website at: <http://www.echr.coe.int>

FR

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content of IRIS, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organizations participating in its editorial board.

• **Publisher:**

European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 88 14 44 00
Fax: +33 (0)3 88 14 44 19
E-mail: obs@obs.coe.int
<http://www.obs.coe.int/>

• **Comments and Contributions to:**
IRIS@obs.coe.int

• **Executive Director:** Wolfgang Closs

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, Communications Media Center at the New York Law School (USA) – Susanne Lackner, Directorate General EAC (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Bernt Hugenholtz, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Christophe Poirel, Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Amélie Blocman, Charlotte Vier,
Victoires Éditions

• **Documentation:** Edwige Seguenny

• **Translations:** Michelle Ganter (co-ordination) – Véronique Campillo – Paul Green – Marco Polo Traductions – Martine Müller – Katherine Parsons – Stefan Pooth – Sylvie Stellmacher – Catherine Vacherat

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) Francisco Javier Cabrera Blázquez, European Audiovisual Observatory – Florence Pastori & Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Natali Helberger, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands)

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European Court of Human Rights: Case *Marônek v. Slovakia*

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

In a judgment of 19 April 2001, the Court also held that there had been a violation of Article 10 of the European Convention on Human Rights, this time in the case of *Marônek v. Slovakia*. In 1992, the daily newspaper *Smena* published an article on the problems experienced by Vladimir Marônek with the allocation of a flat that was the property of a State-owned company. The article stated that the flat allocated to Marônek had been unlawfully occupied by A., a public prosecutor. It also criticised the fact that Marônek had no possibility of using the flat. A few weeks later, the newspaper published an open letter written by Marônek, criticising the fact that the flat which was at his disposal was occu-

Judgment by the European Court of Human Rights (Second Section), Case *Marônek v. Slovakia*, Application no. 32686/96 of 19 April 2001. Available on the ECHR's website at <http://www.echr.coe.int>

EN

ped by A., emphasising again that A. was a public prosecutor and adding: "[S]hould our newly-born democracy have such representatives of law, it will not outlive its childhood and we can bury it right away". Marônek and the newspaper were sued and convicted of defamation. Marônek alleged before the European Court that his right to freedom of expression had been violated.

The European Court noted that the purpose of Marônek's open letter was not only to resolve his individual problem, but also to urge others with a similar problem to take action. According to the Court, he expressed the view, apparently in good faith, that the resolution of the issue was important for strengthening the rule of law in a newly-born democracy. The open letter also raised issues of public interest, capable of affecting housing policy at a period when State-owned apartments were about to be denationalised. Taken as a whole, the statements of Marônek did not appear to be excessive and most of the events on which he had relied had earlier been made public in the *Smena* article. Furthermore, and most importantly, the European Court reached the conclusion that the domestic courts lacked sufficient reasons to justify the relatively high amount of compensation awarded to the claimants. According to the Court, there was no reasonable relationship of proportionality between the measures applied and the legitimate aim pursued (the protection of the rights and reputation of others). Accordingly, the Court held unanimously that there had been a violation of Article 10. ■

Adoption of New Convention for Protection of Audiovisual Heritage

The Committee of Ministers of the Council of Europe recently adopted the European Convention for the protection of Audiovisual Heritage and its Protocol on the Protection of Television Productions. These are the first binding international instruments to deal with such subject matter.

The primary objective of the new Convention is "to ensure the protection of the European audiovisual heritage and its appreciation both as an art form and as a record of our past by means of its collection, its preservation and the availability of moving image material for cultural, scientific and research purposes, in the public interest" (Article 1).

A key concept of the Convention and its Protocol is that of compulsory "legal deposit" with a specially designated (national) "archive body". This obligation is not limited to the mere deposit of a reference copy, but extends to ensuring the preservation of the deposited moving image material. The mandatory requirement of legal deposit is complemented by a "voluntary deposit" with specially-designated "voluntary deposit bodies". While Parties are not precluded from merging their designated archive and voluntary deposit bodies into joint archive bodies, such an arrangement is conditional on the fulfilment of the distinct tasks of each. Whereas archive bodies are concerned, first and foremost, with the protection of moving image material as part of the

**Tarlach
McGonagle**
Institute for
Information Law
(IVIIR)
University of
Amsterdam

The European Convention for the protection of the Audiovisual Heritage and its Protocol on the Protection of Television Productions, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, available at: <http://www.humanrights.coe.int/media/>

EN-FR

audiovisual heritage, voluntary deposit bodies are expected to promote such material for cultural purposes.

In order to avoid being left in the slipstream of technological developments, the Convention does not contain any definition of the term "moving image material"; the underlying thinking being that such a technology-neutral approach will not jeopardise its continued applicability for some time to come. Parties are afforded a certain amount of leeway to define for themselves what the phrase "forming part of their audiovisual heritage" actually entails, as long as the chosen definition is neither arbitrary nor discriminatory. All practical details of the obligations of collection, preservation and guaranteeing of availability should also be fleshed out in the national law of each Party.

A Standing Committee shall oversee the operation and implementation of the Convention. As well as playing an interpretative role *vis-à-vis* the provisions of the Convention, the Committee is empowered to make recommendations concerning the application of the Convention, and to suggest and consider possible amendments thereto. In the pursuance of these duties, the Committee may have recourse to expert advice.

The existence of the Protocol on the Protection of Television Productions can be explained by the preference of the drafters for specific, additional Protocols dealing with "moving image material other than cinematographic works" to complement the general Convention on the protection of the audiovisual heritage.

The 43 Member States of the Council of Europe, other States Parties to the European Cultural Convention, and the European Community will all be eligible to sign the Convention. The Convention will not impose any retrospective legal deposit obligation but the provision for voluntary deposit may apply to works produced before the signature of the Convention. ■

New Recommendation on Self-regulation Concerning Cyber Content

On 5 September 2001, the Committee of Ministers of the Council of Europe adopted a Recommendation concerning self-regulation and user protection against ille-

gal or harmful content on new communications and information services. The Recommendation underlines the importance of Europe-wide and, indeed, international collaboration concerning the regulation of content on the Internet.

Rik Lambers
Institute for
Information Law
(IViR)
University of
Amsterdam

Recommendation Rec(2001)8 stresses the importance of self-regulatory initiatives by the information industries, in cooperation with the governments of member states. It presents certain principles and mechanisms dealing with illegal or harmful content on the Internet, which could be adapted by those parties.

The Recommendation encourages member states to promote the establishment of organisations representing Internet actors, which should participate in relevant legislative processes. Such participation could be

Recommendation Rec(2001)8 of the Committee of Ministers to member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services), available at: <http://cm.coe.int/ta/rec/2001/2001r8.htm>

EN-FR

Committee of Ministers Urges Greater Use of Frisian in Dutch Audiovisual Media

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

In its first recommendations on the application by States Parties of the European Charter for Regional or Minority Languages, the Committee of Ministers of the Council of Europe has called upon the Dutch authorities to "take into account the special needs of broadcasting in Frisian and consider increasing its financial support."

This provides tacit reaffirmation of a key principle underlying Article 11 of the Charter, which focuses on the media. As explained in the Explanatory Report to the Charter, "[T]he time and space which regional or minority languages can secure in the media is vital for their safeguard" (para. 107). The Charter was opened for signature in 1992 and entered into force in 1998 after the necessary five ratifications had taken place. At present, it boasts a total of 15 ratifications/accessions.

The recommendations arose out of the Charter's prescribed monitoring procedures, which are outlined in Articles 15-17 of the Charter. These involve the submis-

Council of Europe Committee of Ministers Recommendation RecChL(2001)1 on the application of the European Charter for Regional or Minority Languages by the Netherlands, 19 September 2001, available at: [http://local.coe.int/inc.asp?L=E&M=\\$t/212-5-0-5/minlang/news/..monitoring/cmrecommendations/Netherlands.htm](http://local.coe.int/inc.asp?L=E&M=$t/212-5-0-5/minlang/news/..monitoring/cmrecommendations/Netherlands.htm)

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Further information on the Frisian Language is available at: <http://eblul.org/State/netherlands.htm>

Approval of Committee of Ministers' Deputies for Draft Cyber-crime Convention

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

As previously reported (see IRIS 2001-5: 3 and 2001-7: 2), the Council of Europe is currently entering the final straight of the process to adopt the first international treaty "to address criminal law and procedural aspects of various types of criminal behaviour directed against computer systems, networks or data and other types of similar misuse."

The approval of the Final Draft Convention on Cyber-crime by the Committee of Ministers' Deputies on 19 September marked a closing stage of a legislative process begun in November 1996 when the European Committee

(Final) Draft Convention on Cyber-crime and Draft Explanatory Report, available at: <http://conventions.coe.int/Treaty/EN/cadreprojets.htm>

EN-FR

achieved through, *inter alia*, consultations, hearings and expert opinions, and in the implementation of relevant norms. In cooperation with these organisations, member states should provide for the neutral labelling of, for example, pornographic and violent content, enabling users to exercise their own judgment in this connection.

Besides this definition of a set of content descriptors, search tools and filtering profiles should be developed, which could be applied by users on a voluntary basis. The use of conditional access tools to protect minors from harmful content should be promoted. Examples of these access tools include age-verification systems, personal identification codes, passwords, encryption and decoding systems.

Internet users should have access to content complaint systems such as hotlines, provided by both private institutions and public authorities. To deal with complaints about certain content, out-of-court mediation and arbitration should be established.

Member states are also urged to encourage public awareness and information about all these different measures. ■

tion by the States Parties of periodical reports on action taken by them in pursuance of the Charter's provisions; the examination of these reports by a specially-appointed committee of experts (this examination can include the provision of further information by bodies legally established in a concerned State Party); verification/explanatory communication processes with the State authorities; the compilation of experts' reports and the possibility of their publication. The purpose of rendering public recommendations made to an individual State is to precipitate the adoption of measures that would ensure the honouring of its obligations under the Charter.

Other recommendations directed at the Netherlands include the promotion of the use of Frisian as the medium of instruction in pre-school and primary school; the teaching of the language throughout the education system and also the provision of relevant teacher-training. In addition, the Dutch Government was instructed to ensure that the right to use Frisian in dealings with the judicial and administrative authorities is effective in practice.

Frisian belongs to the Indo-European family of languages and the variety spoken in the Netherlands is known as *Frysk* (West Frisian). An estimated 450,000 people are able to speak *Frysk* and they are concentrated mainly in the province of *Fryslan* (Friesland).

The Committee of Ministers also addressed recommendations on the application of the Charter to Croatia and Finland. ■

on Crime Problems (CDPC) took the decision to establish a committee of experts to deal with cyber-crime. The Ministers for Foreign Affairs of the 43 Member States of the Council of Europe are now expected to formally adopt the Draft Convention on 8 November and it will be open for signature from the end of that month. It will acquire force of law upon ratification by five states, at least three of which must be Member States of the Council of Europe.

As stated in the Draft Explanatory Report thereto, the Draft Convention's central objectives include: "(1) harmonising the domestic criminal substantive law elements of offences, and connected provisions in the area of cyber-crime (2) providing for domestic criminal procedural law powers necessary for the investigation and prosecution of such offences as well as other offences committed by means of a computer system or evidence in relation to which is in electronic form (3) setting up a fast and effective regime of international co-operation." ■

Recommendation on Measures to Protect Copyright and Combat Piracy

On 5 September 2001 the Committee of Ministers of the Council of Europe adopted a Recommendation on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment (Rec (2001) 7).

The aim of the work leading up to this new Recommendation was to provide the member states with an updated legal arsenal in the fight against digital piracy. The Recommendation is based on an older text, Recommendation No. R (88) 2 on measures to combat piracy in the field of copyright and neighbouring rights, taking into account the technological progress and recent inter-

Páll
Thórhallsson
Media Division
Council of
Europe

Recommendation Rec(2001)7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment, adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies, available at:
<http://cm.coe.int/ta/rec/2001/2001r7.htm>

EN-FR

EUROPEAN UNION

Council Agrees to Release Documents to "Statewatch"

Marking a *volte-face* from an earlier decision, the Council of the European Union recently agreed to release certain documents to "Statewatch", a UK-based civil liberties NGO. The decision to release the requested documents was prompted by the intervention of the European Ombudsman.

"Statewatch" seeks to encourage "the publication of investigative journalism and critical research in the fields of the state, civil liberties and openness". It is also involved in the promotion of freedom of information and access to documents, *inter alia*, at the European Union level.

In 1997, the organisation's initial request for access to the agendas of the "Senior Level Group" and the "EU-US Task Force" were turned down by the Council, on the basis that these documents had three separate authors, i.e., the Presidency of the Council, the European Commission and the US authorities. The effect of this, it was contended, was to put the documents beyond the remit of the Council Decision on public access to Council documents (93/731/EC), by virtue of Article 2(2) of that decision. This article sets out the circumstances in which requests for the disclosure of documents ought to be addressed directly to parties other than the Council.

When "Statewatch" once again requested the aforementioned agendas in 1998, the Council's refusal to release the documents was grounded in different rea-

Tarlach
McGonagle
Institute for
Information Law
(IVI^R)
University of
Amsterdam

"Council agrees to release documents to Statewatch after European Ombudsman intervenes", EO/01/16 of 20 September 2001

DE-EN-FR

Decision of the European Ombudsman on complaint 916/2000/GG against the Council of the European Union, available at:

<http://www.euro-ombudsman.eu.int/decision/en/000916.htm>

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Council Decision on public access to Council documents, 93/731/EC, of 20 December 1993, available at:

http://europa.eu.int/eur-lex/en/lif/dat/1993/en_393D0731.html

DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

The website of "Statewatch" is: <http://www.statewatch.org>

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national standard setting, especially with the 1994 TRIPS Agreement and the two new WIPO treaties adopted in 1996.

The Recommendation urges Council of Europe member states to ratify the WIPO treaties as soon as possible, bearing in mind that effective protection of rights-holders is increasingly dependent on the harmonisation of such protection at the international level. Since these treaties only covered certain categories of rights-holders, the Recommendation provides that other categories of rights-holders, i.e. broadcasters, producers of databases and audiovisual performers as regards their fixed performances, should also be accorded protection adapted to the digital reality.

Several different ways of tackling piracy are recommended. First of all piracy should be a criminal offence under national law. Over and above action based on complaints by the victims, member States should provide for the possibility of *ex officio* action by public authorities. As regards civil law, the courts should have the possibility of ordering provisional measures required to prevent an infringement or to preserve relevant evidence. Where necessary, these measures could be taken without hearing the affected party.

Finally, the Recommendation offers a possible remedy regarding the illegal production of optical discs (CD's, DVD's etc.). It is recommended that member states should study the possibility of introducing a legal obligation to use a unique identification code when producing such discs. This would help determining the origin of a suspect product. ■

soning. The Council now claimed that the documents were not actually held by the Council proper, but by the General Secretariat to the Council and that they were not registered or systematically filed. In consequence, the Council argued, the requested documents fell outside the scope of the relevant rules on public access (as set out in Council Decision 93/731/EC).

"Statewatch" appealed this decision to the European Ombudsman. The ensuing process culminated in March 2001 when the Ombudsman issued a draft recommendation in which he requested the Council to release the documents unless one of the stated reasons for non-disclosure (as *per* Article 4, 93/731/EC) applied. These exceptions include the protection of: the public interest (a broad term embracing public security, international relations, court proceedings and official inquiries); the individual; privacy; commercial and industrial secrecy and the Community's financial interests.

The Court of First Instance once ruled that the principle underpinning Decision 93/731 is that of ensuring "the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration". The Ombudsman therefore took the view that this objective would not be attained if documents, of which the Council was the author (or co-author), were to be considered beyond the scope of Decision 93/731 simply because they were in the possession of the Council Secretariat. He saw no reason why the Secretariat should be considered as "another Community institution or body" in the sense intended by Decision 93/731.

The Ombudsman concluded with a finding of maladministration (which he defined as the failure of a public body "to act in accordance with a rule or principle which is binding upon it") insofar as the Council had based its refusal to release the documents on Article 1(2) of Decision 93/731 which relates to the definition of Council documents as written texts in whatever medium "containing existing data and held by the Council..." After re-examining its decision in light of the Ombudsman's draft recommendation, the Council concluded that the content of the requested documents was not covered by the Article 4 exceptions and proceeded to release the agendas to "Statewatch". ■

European Commission: Promotion of Better Internet Access for People with Disabilities

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

The European Commission has adopted a Communication which aims to improve the accessibility of public websites for people with physical, sensory, cognitive and other disabilities. The Communication, "eEurope 2002: Accessibility of Public Web Sites and their Content", is part of the eEurope Action Plan 2002, which was endorsed by the Feira European Council in June 2000 (see IRIS 2000-6: 5).

The central objective of the Action Plan is to improve the use of the Internet in Europe in both qualitative and

"Commission promotes better Internet access for people with disabilities", Press Release IP/01/1309 of 25 September 2001, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/130910IRAPID&lg=EN

DE-EN-FR

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee, and the Committee of Regions, "eEurope 2002: Accessibility of Public Web Sites and their Content", adopted on 25 September 2001, available at: http://europa.eu.int/information_society/topics/citizens/accessibility/bad/index_en.htm

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Commission Adopts Communication on Cinema and Audiovisual Industry

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

The European Commission has adopted a wide-ranging Communication which examines many legal issues relating to the European audiovisual industry in general and the cinema in particular. The Communication, which presents the Commission's policy orientations as well as discussing possible initiatives, grew out of a recently-concluded public consultation exercise (see IRIS 2001-5: 4).

The Communication on certain legal aspects relating to cinematographic and other audiovisual works of 26 September 2001, examines issues such as State aid for cinema and television production and the compatibility of such funding schemes with EC law. This examination prompted further discussion of the relevant, existing compatibility criteria which, the Commission concluded, "strike a balance between the aims of cultural creation, the development of the EC audiovisual production and the respect of the EC rules on State aid". Nevertheless, further dialogue with Member States on State funding for cinema and TV production is envisaged.

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, COM(2001) 534 final, of 26 September 2001, available at: http://europa.eu.int/comm/avpolicy/regul/cine1_en.htm

DE-EN-FR

NATIONAL

BROADCASTING

AL - "Shijak TV" Risks Being Closed Down

"Shijak TV", the first private television in Albania, which started transmitting in 1996, risks being closed down, after the commencement on 17 September of procedures for the seizure of its equipment estimated to be

quantitative terms. The goals of the Communication are therefore very much in tune with those of the Action Plan, as both strive for effective, all-inclusive participation in the nascent Information Society. The thrust of the Communication is the promotion of a set of guidelines which, if applied to public websites, would render those websites and their content much more accessible to people with disabilities. The Communication was born of a social imperative: the continued inaccessibility of public websites and their contents to people with disabilities, in the face of ever-increasing dependence on new technologies in administrative, health, educational and other domains, would lead to a grave risk of exacerbating the social and political exclusion of a very significant sector of society. An estimated 37 million citizens of the EU suffer from some kind of disability.

The accessibility guidelines were elaborated by the World Wide Web Consortium / Web Accessibility Initiative (W3C/WAI) and constitute "a voluntary mechanism for public information providers to conform to a set of informal rules which take the form of principles, tools and methods". EU Member States and the EU institutions have been instructed to adopt these guidelines by the end of 2001. The tightness of the prescribed time-frame is indicative of the sense of priority attached to the principles involved. Provision has also been made for a specially appointed eAccessibility expert group to review Member States' adoption and implementation of the guidelines. ■

The Communication accords the preservation of audiovisual works (in the interests of protecting the audiovisual heritage and promoting cultural diversity) a degree of priority. In this connection, the Commission intends liaising with national authorities with a view to coordinating action, facilitating cooperation and exchanging information on best practices. Issues such as the management and exploitation of copyright and neighbouring rights are discussed in the Communication and the possibility of creating public registers of films in Member States is also mooted.

Consideration is given to the potential of e-cinema for increasing the circulation of European audiovisual works. The existing possibility for Member States "to apply a reduced rate [of taxation] to cinema admissions" is highlighted and a study of whether differences in film classification practices in Member States have any impact on the success of films will be undertaken. A group of experts will be established in order to discuss issues relating to the circulation of European audiovisual works and to assist the Commission in its relevant policy-formulation.

The Commission is of the view that any debate pivoting on definitional matters (eg., a "European work" or an "independent producer"), will usefully feed into the planned review of the "Television Without Frontiers" Directive in 2002. ■

worth about USD 200,000.

This came as a result of the decision of the Court of First Instance in Tirana, case No. 2822, dated 23 July 2001, according to which "Media+, A.E.", proprietor of "Shijak TV", is obliged to pay damages to "Media 6, A.E." proprietor of the national TV "Klan", estimated at USD 196 918.

"Media 6" has demanded from the court of Tirana "the stoppage/detention of the audio-visual transmission of the A Series matches of the Italian Football Championship for 2000-2001 and 2001-2002 sessions and the Champions' League in Football on part of "Shijak TV" as well as compensation/damages as a result of the violation of the franchise for transmission.

The request of "Media 6" is based on Articles 26, 30, 34, 37, 50 of the Law 7564, dated 19. May 1992 "On copyright"; on Articles 608, 609, 640 of the Civil Code and Articles 185, 317 of the Code of the Civil Procedures of the Republic of Albania.

The complainant ("Media 6") has signed a contract with UEFA (Union of European Football Association) dated 7 August 2000, according to which "Klan TV" has won the franchise to transmit the football matches during the 2000-2001, 2001-2002 and 2002-2003 sessions of the Champions' League. This cost "Klan TV" USD 200 000.

On 29 September 2000 "Media 6" also signed a contract with "Sport Media" LTD for the transmission of the A series matches of the Italian Football Championship during the 2000-2001 and 2001-2002 sessions.

The National Council for Radio-television, the sole State Authority for licensing and monitoring private radio and television stations in Albania, issued official

Hamdi Jupe
Media Committee
of the Albanian
Parliament

document No. 423/2, dated 27 November 2000, warned "Shijak TV" that the transmission of these football matches constitutes a violation of the licensing conditions, in accordance with law No. 8655, dated 31 July 2000. In contravention of this, "Shijak TV" has continued systematically transmitting the football matches without any contractual right.

The Court of First Instance in Tirana found "Shijak TV" guilty and decided that "Media+" should pay the above-mentioned sum to "Media 6". As a result of not complying with its decision, the court ordered the execution of decision No. 658 seizing the equipment of "Shijak TV" by the Executor's Office.

On Monday, 17 September 2001, the Executor's Office in Tirana Court, accompanied by the police force, registered the equipment and other means of transmission, property of "Shijak TV" as the beginning of the procedure of seizure. At the same time there was a protest by supporters of "Shijak TV" gathered in front of the Building.

Gezim Ismaili, president and sole owner of "Shijak TV" called the decision of the Court of the First Instance of Tirana and the decision to seize the equipment "an arbitrary and political court decision". He claimed that the execution of the decision of the Court of First Instance was ordered before the case was considered in the Appeals Court. The "Forum of Free Media", an independent association of Albanian journalists, also protested against the decision of the Tirana Court.

"Shijak TV" has continued transmitting the football matches even after the beginning of the sequestration procedure. ■

BE - New Executive Agreement 2002-2006 between VRT and Flemish Government

After long and difficult negotiations between the public broadcasting organisation VRT and the Flemish Government, a new agreement has been reached on the specific rules and conditions for the allocation of public finances to the VRT. According to Articles 15-17 of the Flemish Broadcasting Act, such an agreement between the VRT and the Flemish Government is necessary for each new period of five years. The new executive agreement will replace the agreement for 1997-2001.

The agreement emphasises the "mission statement" of the VRT, as formulated in the Flemish Broadcasting Act (Article 8), with explicit reference to the Resolutions of Prague (1994) and Cracow (2000) on the role of public broadcasting in a democratic society. The VRT has to provide a reference point for all members of the public and be a vector for social cohesion and the integration of all individuals by being attentive to the needs of minority groups and developing pluralistic, innovative and varied programming which meets high quality standards. Quality is defined as "public quality", "functional quality", "ethical quality", "operational quality" and "professional quality". Concrete objectives and options have been formulated, in particular, for news and information programmes (an average of 1.5 million viewers per day) and

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

Beheersovereenkomst tussen de VRT en de Vlaamse Gemeenschap 2002-2006 (Executive Agreement between the VRT and the Flemish Community 2002-2006), 7 June 2001, available at: <http://www.vrt.be/nl/documentatie/htm/home.htm>

NL

cultural programmes. Special efforts will have to be undertaken with regard to educational programmes (an average audience of 10% of population) and children's programmes (i.e., for 4-12 year-olds: an average audience of 70%). From 18:00h until 23:00h, at least 50% of the programmes shall be Flemish TV-productions (or co-productions). The six radio stations of the VRT should reach 65% of the audience on a weekly basis.

The agreement also contains important innovative options with regard to new technologies: digitalisation, e-services and e-platforms are to be developed within the framework of an Application Service Provider (ASP) model. These projects of the "E-VRT" will be financed separately by the Flemish Government, according to a specific agreement with the VRT. The accelerated digitalisation and annotation of the VRT-archive of sound and images will also depend on additional financing by the Flemish Government. Other chapters of the agreement deal with the optimisation of the transmission infrastructure, the development of DAB and DVBT, the exploitation of rest capacity of transmission networks, process management and informatisation of working processes and information flows (Enterprise Resources Planning - ERP) and Human Resources Management (training, remuneration, evaluation, function classification, consumer orientation).

The public funding that the VRT will receive for the implementation of the agreement for 2002-2006 will be EURO 229,326,000 in 2002, increasing by 4% each year up to EURO 268,279,000 in 2006. The agreement will enter into force on 1 January 2002. ■

CH - Foreign Advertising Window Unwelcome

The *Bundesamt für Kommunikation* (Federal Communications Office - BAKOM) has declared that plans by French TV channel M6 to broadcast a Swiss advertising

window are "unwelcome" as far as Swiss media policy is concerned. The BAKOM estimates that the Swiss media sector loses around CHF 107 million in advertising revenue each year because of advertising windows already operating on German TV channels. In the French-

Dr Oliver
Sidler,
lawyer, Zug

speaking areas, it is reckoned that a Swiss advertising window broadcast by M6 could deprive the public broad-

Press Release of the Federal Office of Communications of 11 September 2001, available at: <http://www.bakom.ch/fre/subsubpage/docs/1791/>

DE-FR

CZ – TV Broadcasters Punished for Breaking Advertising Rules

The Broadcasting Council, which monitors broadcasting in the Czech Republic, has imposed fines on several Czech TV broadcasters.

In one case, broadcasters repeatedly showed an advertisement for a brand of sweet, in which a girl threw her doll at a car at a street crossing so that the activated airbags trapped the car's occupants against the back of their seats. The girl then took a sweet from the hand of an astonished woman sitting in the car. A voice then said: "(name of brand) - when you must, you must". In the Broadcasting Council's view, this advertisement was aimed at minors and encouraged behaviour that threatened the health and psychological development of minors. Such advertisements were prohibited under Act No.40 on advertising regulations. The broadcasters con-

Jan Fučík
Broadcasting
Council
Prague

Broadcasting Council of the Czech Republic, decisions Rpo/85/00, Rpo/86/00 and Rpo/87/00, 8 January 2001

Broadcasting Council decisions Rpo/10/01, 27 March 2001 and Rpo/17/01, 1 June 2001

CS

ES – Rejection of Bills on Appointment of Director of Public Broadcaster

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

According to the *Estatuto de Radio y Televisión* (the Statute of Radio and Television) of 1980 (Act 4/1980), the Director of the national public broadcaster *Ente Público de Radiotelevisión Española* (RTVE) is appointed by the Government (Article 10.1), which can also dismiss him/her (Article 12). Since the Statute was approved in

Proposición de Ley sobre modificación de la Ley 4/1980, de 10 de enero, de Estatuto de Radio y Televisión, por la que se regula la elección parlamentaria del Director de Radiotelevisión Española, del Consejo Superior de los Medios Audiovisuales (Orgánica), presentada por el Grupo Parlamentario Mixto, BOCG, nº 52-1, 12.05.2000

Proposición de Ley sobre modificación de la Ley 4/1980, de 10 de enero, de Estatuto de Radio y Televisión, por la que se regula la elección parlamentaria del Director de Radiotelevisión Española, presentada por el Grupo Parlamentario Federal de Izquierda Unida, BOCG, nº 56-1, 22.05.2000

(Bills presented by the "Grupo Mixto" and the United Left on the appointment of the Director of Radiotelevisión Española by the Parliament)

Diario de Sesiones del Congreso de los Diputados - Pleno, VII Legislatura - BOCG nº 84, 22.05.2001, pp. 4251-4260

ES

ES – Dismissal of Appeals Against Resolutions on Cable Carrier Broadcasting Services

In Spain there is considerable legal uncertainty as regards cable services. Lately, the *Comisión del Mercado de las Telecomunicaciones* (Commission for the Telecommunications Market - CMT) has been involved in a controversy concerning the licensing regime in this field.

Cable services were regulated in 1995 by the Cable Telecommunications Act. It divided the country into local or regional geographic areas and in each area, up to two concessionaires were authorised to provide cable services (cable TV, Internet access and voice communica-

tioner *Télévision Suisse romande* of advertising revenue worth approximately CHF 10-12 million.

The *Conseil Supérieur de l'Audiovisuel* (French broadcasting authority - CSA) has promised the BAKOM that it will only award licences to French broadcasters if Switzerland agrees to this kind of advertising window. However, the BAKOM will strongly oppose this project and, if necessary, order the cable networks not to carry the channel concerned. ■

cerned argued that the scene was clearly exaggerated and that it was technically impossible to trigger airbags in that way. The Council rejected this argument, stating that the broadcast should be assessed in accordance with how a child would interpret it. A child would not realise that the scene was exaggerated. The implication was that sweets could be obtained through acts of violence.

In another case, the Broadcasting Council fined TV broadcasters for interrupting children's programmes with advertising. These fines were imposed in accordance with the old Broadcasting Act, under which commercial breaks during children's programmes were forbidden. In line with European legislation, the new Act, in force since 4 July 2001 (see IRIS 2001-7: 8), only prohibits such interruptions during children's programmes that are of less than 30 minutes' duration. The broadcasters claimed that these particular programmes were not just aimed at children, but at the whole family. The Broadcasting Council rejected this argument on the grounds that children's programmes were defined as those whose content, form and length were aimed at children.

The Broadcasting Council's decisions are not yet final. The TV broadcasters may appeal. ■

1980, many social and political groups have complained that the rules governing the appointment of the Director of RTVE have not been defined in a manner that insulates the Director from the risk of political interference. However, none of the governments that have taken office since 1980 has proposed any amendment of these rules.

In May 2000, two opposition parliamentary groups presented bills on the amendment of the rules governing the appointment of the Director of RTVE. Both Bills would have allowed for the appointment or dismissal of the Director of RTVE by a two-thirds parliamentary majority. The Bills were debated in May of this year and were ultimately rejected by the main party in the *Congreso de los Diputados* (the Lower Chamber of Parliament), the *Partido Popular* (the Popular Party - PP), as it considered RTVE's activities to be free from governmental interference. It also took the view that any amendment of the Statute of Radio and Television should have a wider scope and not merely focus on one specific aspect, such as the rules governing the appointment of the Director of RTVE. ■

tions). One concession was reserved for *Telefónica Cable* (a subsidiary of the *Telefónica* Group) and the other (the so-called "second concession") was to be assigned through a call for tenders.

In 1998, the Spanish Parliament approved a new Telecommunications Act, which liberalised the telecommunications sector. Although this new Act abrogated the 1995 Cable Telecommunications Act, the latter was applied throughout the licensing process and its broadcasting provisions remain in force today. Since the approval of the 1998 Telecommunications Act, the provision of telecommunications services via cable and the establishment or operation of cable telecommunications networks have been liberalised. However, cable TV broad-

casting remains a public service, which can only be provided by the cable TV concessionaires.

As an exception to this regime, cable operators which were providing cable TV services in Spain before the legal framework for cable services was established in 1995, and which were not awarded cable concessions when the available ones were assigned through calls for tenders, have been temporarily authorised to maintain the provision of cable TV broadcasting services by some transitional legal provisions, although this temporary authorisation will expire soon.

In order to remain active, some of these companies have decided to continue using their networks for the

provision of telecommunications services liberalised by the 1998 Telecommunications Act. For this purpose, they asked the CMT for individual licences (within the meaning of the Directive 97/13/EC on a common framework for general authorizations and individual licences in the field of telecommunications services and the 1998 Telecommunications Act) for the provision of several telecommunications services, including cable broadcasting carrier services. In October 2000, the CMT awarded these companies the individual licences they had requested. Some of these companies have subsequently been awarded general authorisations for the transmission of information, text, images and sound by means of public fixed networks, which allow them to provide, through their networks, services such as video-on-demand, video-conferencing or Internet access.

The CMT Resolutions of October 2000 awarding these companies several individual licenses were appealed, first by some cable concessionaires, and then also by the General Director of Telecommunications and Information Technologies of the Ministry for Science and Technology. They argued that the CMT was not entitled to allow any company to provide cable broadcasting services, as the CMT did not have the power to award cable concessions within the meaning of the 1995 Cable Telecommunications Act. They also posited that even if the CMT did have the power to award individual licences, this kind of telecommunications permit did not cover, according to the 1998 General Telecommunications Act, the provision of broadcasting services.

In April and July 2001, the CMT rejected these appeals on the grounds that its Resolutions complied fully with the 1995 Cable Telecommunications Act and the 1998 General Telecommunications Act, as the individual licences awarded by the CMT only cover the provision of broadcasting carrier services (which were fully liberalised by the 1998 General Telecommunications Act) and not the provision of broadcasting services as such. ■

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

Resolución del Consejo de la Comisión del Mercado de las Telecomunicaciones de 19 de abril de 2001 por la que se resuelve los recursos potestativos de reposición interpuestos por Cádiz de Cable y Televisión, S.A. y otras entidades contra tres resoluciones del Consejo de fecha 19 de octubre de 2000 y una resolución de 14 de diciembre de 2000, por las que se otorgaron a TV por cable Santa Pola, S.L. y otras entidades, licencias individuales de tipo C1 habilitantes para el establecimiento y explotación de una red pública de telecomunicaciones que no implique el uso del dominio público radioeléctrico sin que su titular pueda prestar el servicio telefónico disponible al público (Resolution of the Council of the CMT of 19 April 2001, in the appeal against its Resolutions of 19 October 2000 and 14 December 2000, awarding TV por cable Santa Pola and others several Individual Licences), available at:
<http://www.cmt.es/cmt/document/decisiones/RE-01-04-19-21.html>

Resolución del Consejo de la Comisión del Mercado de las Telecomunicaciones de 12 de julio de 2001 por la que se da contestación al requerimiento de anulación planteado por el Ilmo. Sr. Director General de Telecomunicaciones y Tecnologías de la información respecto de la Resolución del Consejo del Mercado de las Telecomunicaciones de 19 de abril de 2001 (Resolution of the Council of the CMT of 12 July 2001, answering a request made by the General Director of Telecommunications and Information Technologies by which he asked the CMT to declare its Resolution of 19 April 2001 void), available at:
<http://www.cmt.es/cmt/document/decisiones/RE-01-07-12-06.html>

ES

ES - New Code of Listed Sports Events

On 26 July 2001, the Plenary Meeting of the *Consejo para las Emisiones y Retransmisiones Deportivas* (the Committee for the Broadcasting of Sports Events) approved the Catalogue of Listed Sports Events for the 2001/2002 season. The Catalogue indicates which events in each of the sports concerned must be broadcast on free-to-air TV (provided a free-to-air broadcaster wishes to broadcast them). The listed events are as follows:

- 1) Football
 - i) Spanish Cup: semi-finals (one match in each leg) and the final;
 - ii) Spanish Super Cup;
 - iii) Champions League: one game on each match day with national participation and the final;
 - iv) UEFA Cup: one leg of the semi-final and the final if a Spanish team is playing in any of those matches;
 - v) UEFA Super Cup (if any Spanish team is involved);
 - vi) Any match that the Spanish under-21 national team might play in the under-21 European Cup;
 - vii) Football World Cup: matches of the national team and the final;
 - viii) Any official or friendly match played by the Spanish national team.
- 2) Basketball
 - i) European Cup and World Cup: matches of the national team and the final;

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

Resolución de 26 de julio de 2001, del Consejo de Emisiones y Retransmisiones Deportivas, por la que se ordena la publicación del Acuerdo del Pleno del Consejo de Emisiones y Retransmisiones Deportivas por el que se aprueba el Catálogo de Competiciones o Acontecimientos Deportivos de Interés General para la temporada 2001/2002, Boletín Oficial del Estado n. 186, de 04.08.2001 (Resolution of the Committee for the Broadcasting of Sport Events, on the code of listed sport events for the 2000/2001 season), available at:
http://v2.vlex.com/es/asp/boe_detalle.asp?Articulo=15336

ES

- ii) *Saporta* Cup and *Korac* Cup: semi-finals and final, if a Spanish team is playing in any of those matches;
- iii) Official matches played by the Spanish national team.

3) Cycling

The *Tour de France* and the *Vuelta Ciclista a España*. The broadcasting of these events shall include at least the last hour of each stage.

4) Track & Field

- i) European Championships: finals and Spanish participation in semi-finals;
- ii) World Track & Field Cup and World Cross-country Championships.

5) Handball

- i) European Cup: national team matches and the final;
- ii) Official matches played by the Spanish national team.

6) Motorcycle racing World Championships.

7) Tennis

- i) Participation of Spanish teams in the Davis Cup and Fed Cup;
- ii) *Roland Garros*: participation of Spanish players in quarter-finals, semi-finals or finals.

In addition, it ought to be noted that article 5 of Law 21/1997 states that a match from every league or cup competition match day, for those sports to which such competition systems apply, must be broadcast live, free and throughout the entire national territory. In practice, this provision has been applied in relation to the football and basketball national leagues. ■

ES – Audiovisual Developments in Autonomous Community of Navarra

In July 2001, the Parliament of the Autonomous Community of Navarra approved a new Act on the provision of audiovisual services in Navarra and on the creation of the *Consejo Audiovisual de Navarra* (the Audiovisual Council of Navarra - *CAN*).

This Act implements some provisions of the national Act 25/1994 (as amended by Act 22/1999), which incorporates the "Television Without Frontiers" Directive into Spanish Law. The new Act of Navarra obliges broadcasters under its jurisdiction to comply with quotas for Navarran programmes. It also regulates advertising, sponsorship and the protection of minors, and implements in Navarran law article 18 of Act 25/1994 on the right of TV users

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

Ley Foral 18/2001, de 5 de julio, por la que se regula la actividad audiovisual en Navarra y se crea el Consejo Audiovisual de Navarra, Boletín Oficial del Estado n. 191, of 10.08.2001, pp. 30115-30126 (Act 18/2001 of 05 July 2001 on the regulation of the provision of audiovisual services in Navarra, and on the creation of the Audiovisual Council of Navarra), available at:
http://v2.vlex.com/es/asp/boe_detalle.asp?Articulo=15780

ES

to receive accurate information on the programme planning of TV channels: broadcasters under Navarran jurisdiction shall release their programme schedule at least 11 days before broadcast and they shall post it on their websites, if they have one.

Act 18/2001 of Navarra only implements Act 25/1994, but not other national laws, which might require further implementation in order to be applied by the Navarran authorities, such as the 1995 Cable Telecommunications Act, or the legislation on digital terrestrial TV.

This Act provides for the creation of an independent audiovisual regulatory authority, the *CAN*. Five of its seven members shall be appointed by the Parliament of Navarra, and the remainder by the Government of Navarra. They can only be dismissed in the event of failure to respect the rules of incompatibility with which they must comply, incapacity to exercise their functions, or on the grounds of an offence, subject to a final decision by a court. The *CAN* shall have the power to impose sanctions, and it shall also give its binding opinion on certain matters, such as the drafting by the Government of Navarra of Decrees and calls for tenders relating to the provision of audiovisual services in Navarra. Thus, like Catalonia, Navarra now has independent audiovisual regulatory authorities entrusted with powers that enable them to fulfil their missions, while at national level, many relevant audiovisual responsibilities (including content control, the granting of concessions and the application of ownership limits) still belong to the Government. ■

GB – Government Gives Qualified Approval to New BBC Digital Services

The British Culture Secretary has announced her long-awaited decision on the BBC's proposals for four new digital television channels and five new digital radio services. Government approval is needed for the BBC to vary the number or geographical coverage of its services. Guidelines drawn up by the Department for Culture, Media and Sport set out conditions for such approval relating to the nature of the new services and the procedure for consultation on them to be adopted by the BBC. The proposals were especially controversial as they were strongly opposed by rival commercial broadcasters as duplicating their own services whilst benefiting from public funding through the BBC licence fee.

The proposed new television services were two new television channels for children (one for those under six years old and one for those aged six to thirteen); a service for sixteen to thirty-four year olds (the "youth channel") and a television service specialising in culture,

Tony Prosser
School of Law
University of
Glasgow

Department for Culture, Media and Sport, Press Release 244/01, 13 September 2001, "Tessa Jowell Announces Decision on Proposed New BBC Digital Services", available at:
<http://www.culture.gov.uk/creative/search.asp?Name=/pressreleases/creative/2001/dcms244>

arts and ideas. The radio services were aimed at a young specialist audience, an Asian audience and sports fans, together with archive music and voice channels. All services were to be available free-to-air and would carry no advertising.

The Culture Secretary approved all the services with the exception of the youth channel. In relation to the latter, she considered that it did not have a distinctive character as a number of commercial broadcasters provide services to this audience. She invited the BBC to draw up new plans for an alternative service. This decision was a particular disappointment to the BBC as this was to have been the most heavily funded of the new services, and the youth audience is the one which has been most heavily drawn away from the BBC to commercial channels.

All the other proposals were considered to be distinctive and to have clear public service value. They will also serve the Government's general goal of promoting digital broadcasting. They were approved subject to conditions, for example requiring a high proportion of EU/EEA programming and a mixed programming schedule, including material which educates and informs as well as entertainment. They are to be subject to periodic review by the Culture Secretary. ■

GB – Apology Required over Satirical Programme on Paedophilia

The Independent Television Commission (ITC), the British regulator of broadcasters other than the BBC, has required a broadcast apology from Channel 4 over its broadcast of a highly controversial satirical programme on paedophilia and on its treatment in the media. The programme, in the series "Brass Eye", was broadcast on 26 July and repeated on 27 July, attracting around 1,000 complaints to the ITC. The Culture Secretary (the minister responsible for broadcasting) had also intervened by

expressing concern about the inability of the ITC to prevent the broadcasting of the repeat.

In its adjudication, the ITC noted that Channel 4 has a particular statutory remit to have a "distinctive character" and to encourage "innovation and experiment". On this basis, it supported the channel's right to provide "challenging, original and sometimes disturbing material" and found that it had been reasonable to commission the programme. However, the channel was in breach of the ITC's Programme Code requirements to avoid "gratuitous offence" and to issue "clear and specific warnings" where some viewers might find the programme disturbing or offensive. Channel 4 had broadcast

Tony Prosser
School of Law
University of
Glasgow

warnings, but these were worded in terms which were inadequate. Many viewers were also upset by the use of

Independent Television Commission New Release 46/01, 6 September 2001, "ITC Publishes Findings on Channel 4's 'Brass Eye'", available at:

<http://www.itc.org.uk>

The Broadcasting Standards Commission adjudication is available under "Brass Eye Special" at:

<http://www.bsc.org.uk/pdfs/bulletin/brasseyespecialfinding.htm>

IT - New Regulation on Advertising and Teleshopping in Force

On 8 October 2001 a new Regulation on advertising and teleshopping adopted on 25 July by the *Autorità per le garanzie nelle comunicazioni* (the Italian Communications Authority) pursuant to the *Istituzione dell'Autorità per le Garanzie nelle Comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo* (the Communications Act) of 31 July 1997, no. 249 (see IRIS 1997-8: 10), will enter into force.

The Regulation represents the final step of a procedure begun on 10 March 2000 with the launch of a public consultation (see IRIS 2000-9: 10). It applies to all radio and television broadcasters, public and private, national and local, which fall under Italian jurisdiction according to the principles of European Community law (articles 1 and 2). In addition to some provisions recalling the wording of "Television Without Frontiers" Directive 89/552/EEC, as amended ("the Directive"), it introduces new measures on the separation of programmes and advertising and on the insertion of advertising during programmes (articles 3 and 4).

Advertising and teleshopping shall be readily recognisable as such and kept separate from other parts of the programme service by optical (on television) or acoustic (on radio) means which have to be inserted at the beginning and at the end of the programme. During the TV broadcasting of advertising and teleshopping, the screen has to show the signs "pubblicità" and "televendita" respectively.

Other measures to ensure the application of the separation principle are as follows:

child actors in this context. The Broadcasting Standards Commission, a different body responsible for investigating complaints about broadcasting standards, has also partially upheld complaints on this ground.

The ITC found that Channel 4 could not be considered negligent or to have shown wilful disregard for the provisions of the Programme Code. As a result, it was only required to broadcast an apology for the offence caused. This lies very much at the milder end of the sanctions available to the ITC, which include the power to fine companies and, in very extreme cases, to withdraw their licences. ■

- programme anchorpersons may not present telepromotions as defined in the RTI case (ECR 1996, I-6471 - see IRIS 1997-1: 7) and teleshopping in the same context as the programme they are fronting;
- advertising which is broadcast before or after a cartoon programme may not use characters of the same cartoon;
- advertising and teleshopping imitating or making a parody of the feature of a particular programme may not be broadcast before or after the programme they imitate or parody.

During the transmission of sports events, advertising and teleshopping spots shall only be inserted during the intervals which are foreseen by the official game regulation of the event being broadcast or during the pauses of the game, provided that the advertising break does not interrupt the transmission of the sports action in progress. The calculation of the scheduled duration of a programme for the purposes of article 11, paras. 3 and 5, of the Directive is made according to the gross principle, while the net principle applies to the calculation of the twenty-minute interval that should elapse between each successive advertising break within a programme, according to article 11, para. 4, of the Directive. Cartoon programmes, either broadcast autonomously or within children's programmes, may never be interrupted by advertising or teleshopping breaks, with the exception of feature or TV films, which fall under the general rule of article 11, para. 3, of the Directive.

In case of non-compliance with the rules laid down by the Regulation, the Communications Authority may apply fines ranging from *circa* EURO 10,000 to EURO 150 million pursuant to article 2, para. 20, *lit. c*), of the *Norme per la concorrenza e la regolazione dei servizi di pubblica utilità. Istituzione delle autorità di regolazione dei servizi di pubblica utilità* (the Regulatory Authorities Act) of 14 November 1995, n. 481, and to article 1, para. 31, of the aforementioned Communications Act. ■

Maja Cappello
Autorità per le
Garanzie nelle
Comunicazioni

Regulation of the *Autorità per le Garanzie nelle Comunicazioni* of 25 July 2001, no. 538/01/CSP, *Regolamento in materia di pubblicità radiotelevisiva e televendite* (*Gazzetta Ufficiale* of 8 August 2001, *Serie Generale* no. 183), available at:
http://www.agcom.it/provv/d_538_01_CSP.htm

IT

PL - Proposed Amendments to Broadcasting Act

On 13 June 2001, the Polish Committee for European Integration adopted amendments to the Broadcasting Act, which were accepted by the Council of Ministers on 29 June 2001. The draft is designed to transpose Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by the Directive 97/36/EC (The Directive "Television Without Frontiers"), in the scope of jurisdiction, definition of European works and European quotas. The Broadcasting Act had been amended in 2000 (see IRIS 2000-6: 9). Since this amendment did not provide for the full compliance of Polish law with the provisions stipulated in the

Directive, a subsequent amendment to the aforementioned act was deemed necessary. The Republic of Poland, in view of its commitments, is obliged to implement European Community provisions into national law not later than on the date of accession. The last round of negotiations in this field was held in the end of 2000 and the chapter 20 "Culture and audiovisual policy" was provisionally closed on 4 December 2000. Nonetheless, certain provisions included in Polish Broadcasting Act in force do not fully comply with those of the Directive.

In order to fulfil the aforementioned commitments the draft law provides for changes in the scope of jurisdiction, as stipulated in Art. 2 of the Directive Television without Frontiers. Art.1 para. 1 of the Draft separately establishes jurisdictional criteria, e.g. a permanent seat of a broadcaster as well as some additional technical criteria, which should be applied to the Member States of

Katarzyna
Masłowska
National
Broadcasting
Commission of
Poland

European Union and Non-Member States.
The draft establishes new criteria concerning the promotion of European works, including independent Euro-

Drafted amendments to the 1992 Broadcasting Act

PL

PL – National Broadcasting Council's Views on "Big Brother"

Hanna Jedras
National
Broadcasting
Council of
Poland

Monitoring the broadcasters' violations of programme standards, the National Broadcasting Council of Poland (NBC) voiced its criticism concerning the "Big Brother" show and other shows following a similar format, arguing that they may be socially harmful. In its opinion these broadcasts may have negative effect on the behaviour of some viewers. The Council announced in its Standpoint of 22 March 2001 that it would be particularly scrupulous in examining whether such reality show programmes comply with the provisions of the Broadcasting Act.

Standpoint of the National Broadcasting Council of Poland of 22 March 2001
Decision of the Council no 11 of 18 July 2001

PL

PT – Television Operators Sign Agreement on Human Dignity

Helena Sousa
Departamento de
Ciências da
Comunicação
Universidade
do Minho

Under the aegis of the *Alta Autoridade para a Comunicação Social* (the Authority for the Media), the Portuguese national broadcasting operators (*RadioTelevisão Portuguesa*, *Sociedade Independente de Comunicação* and *Televisão Independente*) have signed a self-regulatory protocol in order to safeguard human dignity in television programming. The document had been discussed for quite some time, but it was only on 18 September 2001

Comunicado da Alta Autoridade para a Comunicação Social de 18 de Setembro de 2001 / Protocolo relativo às regras para a salvaguarda da dignidade da pessoa humana na programação televisiva (Statement of the High Authority for the Media of 18 September), available at: <http://www.aacs.pt/bd/Comunicados/20010918.htm>

Lei da Televisão, Lei nº 31-A/98 de 14 de Julho (the Television Law), available at: <http://www.secs.pt/leitvaprova.html>

PT

RU – Statute Limiting Foreign Ownership of TV Enters into Force

Natali
Boudarina
Moscow Media
Law and Policy
Center

On 4 August 2001, the Russian President signed an addendum to the Mass Media Statute of 1991. The Statute entered into force in 9 August 2001. The new article (19-1) concerns foreign citizens, stateless persons, those with dual citizenship, as well as foreign legal entities and

The Statute *O vnesenii izmeneniy v zakon RF "O sredstvakh massovoi informatsii"* (On the Addendum to Mass Media Statute) was officially published in *Rossiyskaya gazeta* on 9 August 2001

RU

RU – Statute Prohibits Showing Smoking on Television

Natali
Boudarina
Moscow Media
Law and
Policy Center

On 10 July 2001 the Statute "On Restriction of Tobacco Smoking" was signed into force by the President of the Russian Federation. Article 7 of the Statute

Federalniy Zakon "Ob ogranichenii kureniya tabaka (Statute "On restriction of tobacco smoking") was officially published in *Rossiyskaya gazeta* daily on 14 July 2001

RU

pean works as indicated in Art. 4 and 5 of the Directive. It redefines the notion of "European work" in accordance with the guidelines of Art. 6 of the Directive. It also states that broadcasters reserve at least ten per cent of their transmission time for independent European works.

The document introduces changes regarding the amount of share capital that can be held by foreign shareholders, establishing a limit of 49% instead of 33%.

Generally, drafted proposals will be binding from the date the Republic of Poland becomes a member of the EU. ■

On 18 July 2001, after the initial series of episodes of "Amazonki", another version of "Big Brother", the NBC issued a Decision determining that *Polskie Media S.A.* (the Licensee) had infringed Art. 18.1 of the Broadcasting Act, which states that "programmes or other broadcasts may not encourage actions contrary to moral values and social interest (...)". The Council appeals to the Licensee to avoid violations of the right to privacy of the participants of the show, otherwise *Polskie Media S.A.* would be fined as stipulated in Art. 54 par. 1 of the Broadcasting Act. The NBC justified its standpoint claiming that the broadcaster altered the rules which had been previously agreed with the participants and placed cameras in toilets. ■

that the presidents of all of the television companies' boards agreed to sign it.

In the first clause of the agreement (which has a total of seven clauses), the operators state that they shall comply with the Television Law (nº31-A/98 of 14 July) and in particular Article 21 regarding the limits to programming freedom. Other clauses confirm the intention of television operators to comply with the legislation in terms of bad language, violence and sex.

The perceived relevance of the agreement, which does not go any further than the existing Television Law, is related to the fact that operators have never complied with the legislation and the Portuguese authorities have never had the will or the means to implement it. The High Authority for the Media has been under pressure to act in order to ensure human dignity in programming, particularly since the Big Brother reality-show started broadcasting in Portugal on 3 September 2000. ■

Russian legal entities of which more than fifty percent of the capital is held by foreign legal entities.

These persons and entities shall be prohibited from founding TV broadcasting companies if they cover more than half of Russian population or half of its provinces. In addition, selling shares in TV broadcasting organizations, if the transaction results in more than fifty percent participation in mass media of foreign entities is also prohibited. Registration and statutory documents shall be brought into line with the provisions of the Statute not later than twelve months after the statute enters into force. ■

imposes a ban on showing smoking in television films, movies and plays, which are produced after the statute enters into force, if smoking is not an essential part of an art concept. Public figures and politicians shall not be shown smoking in the mass media.

The Statute enters into force in six months after being published. ■

NEW MEDIA/TECHNOLOGIES

CH – Combating Paedophile Internet Content

Dr Oliver
Sidler,
lawyer, Zug

The Swiss *Bundesrat* (Council of Ministers) has resolved, in co-operation with the cantons, to step up

DE – Agreement on Multimedia Home Platform Standard

Alexander
Scheuer
Institute of
European Media
Law (EMR),
Saarbrücken

Public and private broadcasters in Germany have agreed to adopt the Multimedia Home Platform (MHP) standard. This so-called "open" standard should ensure that every form of digitised media service is supported by all broadcasting platforms and terminal equipment. It should therefore be possible to incorporate extra applications such as electronic programme guides (EPG) and conditional access systems (CAS) in the same piece of terminal equipment without having to rely on the proprietary systems of a broadcaster or service provider.

HU – Act on Electronic Signature Entered into Force

Gabriella Cseh
Squire, Sanders
& Dempsey

On 29 May 2001, the Hungarian Parliament adopted Act XXXV of 2001 on Electronic Signature ("the Act"). Most provisions of the Act entered into force on 1 September 2001.

The Act covers the scope of the utilization of electronic signatures and the legal conditions for the acceptance of electronic signatures. The Act also specifies the level of security that an electronic document must reach in order to be considered valid and the legal conse-

Act XXXV of 2001 on Electronic Signature

HU

US – Court Gives Cable Network Operators Control of when or whether to Open up Network for Competitive Services

Anna Abrigo
Communications
Media Center
New York Law
School

On July 11, 2001, the Fourth Circuit Court of Appeals handed a victory to cable network operators when it held that Henrico County, Virginia could not legally require AT&T-owned MediaOne, which offered its customers an affiliated service, Road Runner, to open its facilities to rival Internet service providers. According to the court, the local government could not force MediaOne, the nation's number one cable operator, to allow other ISPs such as America Online, Juno, or Prodigy to use its facilities.

This decision is the latest in the ongoing open access issue in the U.S. The Fourth Circuit panel joined the Ninth Circuit Court of Appeals (San Francisco, California) and the U.S. District Court, Miami, Florida, with its ruling that cable modem lines could not be regulated locally. Although the three courts differed on grounds for rejection and on regulatory classification of Internet access over cable lines, they all agreed that cities and counties could not impose restrictions on a cable modem service. Although consistent with the Ninth Circuit's conclusion that invalidated a local ordinance's open access requirements, the Fourth Circuit noticeably did not cite the *City of Portland* case. Further, it avoided the task of classifying a cable modem service as a "cable service," a "telecommunications service," or an "information service" which was a central analysis in the Ninth Circuit's decision.

MediaOne Group v. County of Henrico, No. 00-1680 (July 11, 2001)
AT&T Corp. v. City of Portland, 216 F.3d 871 (9th Cir. 2000)
Comcast Cablevision of Broward County, Inc. v. Broward County, 104 F. Supp. 2d 1365

the fight against punishable offences committed with the aid of information and communications systems. It is particularly concerned about child pornography on the Internet. In two statements on parliamentary motions, the *Bundesrat* said it wished to combat this new phenomenon through closer coordination between the Federation and the cantons. In accordance with proposals by a working group and in co-operation with the cantons, it intends to set up an Internet monitoring authority with responsibility for identifying illegal Internet content. A separate body will be responsible for coordinating legal proceedings and referring cases to the appropriate criminal prosecution authorities. ■

The consensus is being linked to the recent sale of a number of regional cable operators by *Deutsche Telekom AG* to American investors, some of whom also hold shares in content-providing companies. As part of the general reform of its legal framework for communications, the European Community has already discussed the idea that all service providers in Europe should be forced to use the MHP standard. However, the Commission appeared reluctant to impose such a requirement. A voluntary agreement between broadcasters and equipment manufacturers was thought to be preferable, primarily so that technical progress could be taken into account. ■

quences of using electronic documents and services related to electronic signatures. The Act also sets forth the substantive and procedural rules on related validation services and contains a separate title on relevant data processing and data protection regulations. Furthermore, the Act stipulates the obligations and powers of the Hungarian Communications Authority in regard to the evaluation and registration of such signatures.

The Act is fully in compliance with relevant European Union legislation and recommendations, for instance Article 9 of 2000/31/EC Directive of the European Parliament and of the Council on "Electronic Commerce". ■

Rather, the Fourth Circuit deferred to the Federal Communications Commission, expecting the agency to take action, and stating that it was "content to leave these issues to the expertise of the FCC." The court gave credit to the Commission's *amicus curiae* brief that "diplomatically reminded us that it has jurisdiction over all interstate communications services, including high-speed broadband services," and that it had initiated a notice of inquiry to examine these classification issues.

Indeed, there is growing pressure on the FCC to spell out the national policy on open access. Although the Commission opened a broad inquiry on the issue last fall and collected many comments, it has not yet made a ruling. Although the agency started proceedings on the open access debate last September, months later the FCC is no closer to a decision than it was at the beginning of the year when the comment period ended. The FCC's Cable Bureau is still in the process of reviewing comments.

The National Association of Telecom Officers and Advisers (NATOA), a proponent of open access, expressed disappointment at the ruling, but are satisfied with the acknowledgement by most cable operators that providing access to multiple ISPs made good business sense and was technically feasible. NATOA is confident that the market would continue to exert pressure on cable operators to provide consumers with a variety of choices.

Also encouraging for open access proponents is that AT&T has committed itself to providing multiple ISP access after the expiration of its exclusive contract with Road Runner.

The Board of Supervisors of Henrico County, Virginia, will not appeal the 4th Circuit's ruling. ■

RELATED FIELDS OF LAW

CH – Pricing Control Authority Orders Cable Fee Reduction

Dr Oliver
Sidler,
lawyer, Zug

For the first time in Switzerland, the national pricing control authority, which is responsible for protecting consumers and the economy from improper pricing due

Press Release of the Pricing Control Authority of 6 September 2001, available at:
http://www.preisueberwacher.admin.ch/dynamic/cp/ACTV/F/ACTV_F.html

DE-FR

DE – Financial Transparency Directive Transposed

Alexander
Scheuer
Institute of
European Media
Law (EMR),
Saarbrücken

Through an Act of 16 August 2001, the Federation transposed into German law Commission Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings.

Gesetz vom 16. August 2001 zur Umsetzung der Richtlinie 2000/52/EG der Kommission vom 26. Juli 2000 zur Änderung der Richtlinie 80/723/EWG über die Transparenz der finanziellen Beziehungen zwischen den Mitgliedstaaten und den öffentlichen Unternehmen (Transparenzrichtlinie-Gesetz)

(Act of 16 August 2001 transposing Commission Directive 2000/52/EC amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (Transparency Directive Act))

DE

DE – KEK Publishes Fourth Annual Report

The *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK) published its fourth annual report on 22 August 2001.

The KEK is an independent body which "shall judge whether plurality of opinion is assured in connection with the nationwide transmission of television programmes" (Article 36.1.1 of the *Rundfunkstaatsvertrag - Inter-State Agreement on Broadcasting - RfStV*). One of the KEK's main tasks is therefore to observe and assess media concentrations using a so-called viewer ratings model (Articles 26 ff. *RfStV*). Among the most important activities it carried out during the 12 months covered by the report (1 July 2000 to 30 June 2001) was the publication of its first report on media concentration, in which it described in detail recent mergers in the media sector (see IRIS 2001-1: 8).

The fourth annual report contains information on the proceedings dealt with by the KEK during the period concerned (15 applications for broadcasting licenses and 35

Carmen Palzer
Institute of
European Media
Law (EMR)

The Fourth Annual Report can be found as a pdf file at:
<http://www.kek-online.de/kek/information/publikation/00-01.pdf>

DE

DE – Federation and Länder Discuss Media Law

In talks held at the end of August between representatives of the Federation and the *Länder*, basic principles for a restructuring of German media regulations were discussed.

to lack of competition, has issued an official decree cutting the subscription fees charged by a cable network operator in a French-speaking region. From 1 January 2002, customers need only pay a monthly charge of CHF 17 instead of CHF 23.70. Around 12,000 subscribers will benefit from this reduction in price. The authority's detailed analysis of the operator's costs showed that the current monthly fee of CHF 23.70 was clearly excessive. It therefore tried to reach a consensus with the network operator, which would substantially cut its subscription charges. However, when lengthy negotiations failed to resolve the matter, the pricing control authority decided to act by issuing an official decree.

This is the pricing control authority's first formal decision involving the cable networks. It has great adverse significance both for the cable market and for network-related infrastructures in general.

The decision is not yet legally valid and will probably be referred to the competition appeals committee. ■

The Act's provisions are applicable to undertakings that are granted special or exclusive rights, as described in Article 86 of the EC Treaty, or entrusted with the operation of services of general economic interest and, for that purpose, granted State aid that was not fixed following an open, transparent and non-discriminatory procedure (Article 1.1).

If the undertakings concerned also carry out other economic activities, they are obliged to keep separate accounts for their public service tasks and their other commercial activities. ■

notifications of changes of ownership) and its decisions. It also includes an overview of national commercial TV stations and ownership of them, together with the viewer ratings they each achieved. During the year, the KEK also studied whether the development of pay-TV and online media meant that the current viewer ratings model needed amending or supplementing so that their potential impact on opinion formation could be properly evaluated (Part I Section 6.4 of the annual report). The report (Part I Section 6.2) also contains the KEK's proposals on amending the concentration regulations set out in the *RfStV*. These proposals follow on from the report on media concentration and discussions with broadcasting experts from the different *Länder*. They include a suggestion that the criteria used to define a dominant source of opinion should be amended and a call for closer co-operation with the *Bundeskartellamt* (Federal Cartels Office), which monitors competition in Germany.

The second part of the report describes current developments in the media sector, eg vertical concentration through planned mergers between ISPs, cable network operators and media undertakings and the situation in the broadband cable market, where *Deutsche Telekom's* regional cable networks have been or will soon be sold off to private investors. ■

As the digitisation of content and transmission networks in the various forms of media continues, the need to re-assign responsibilities at national and regional levels is being discussed. The main areas of concern are the protection of minors, the legal framework for and monitoring of new media services, competition and

Alexander
Scheuer

Institute of
European Media
Law (EMR)

media concentration regulations, and data protection.

According to the model which has been proposed and publicised, the *Länder's* competences for the protection

DE – New Network Monitoring Proposal

Peter
Strothmann

Institute of
European Media
Law (EMR),
Saarbrücken

In September, the Federal Ministry of the Economy published a draft *Telekommunikationsüberwachungsverordnung* (Telecommunications Monitoring Decree - TKÜV).

The document sets out the principle that operators of telecommunications systems used by the general public

Draft *Telekommunikationsüberwachungsverordnung* (Telecommunications Monitoring Decree - TKÜV).

DE

FR – French Regulations on Publishing Opinion Polls Incompatible with Article 10 of the ECHR

For the third time this year the Court of Cassation has found provisions of the French regulations on communications law incompatible with Article 10 of the European Convention on Human Rights (ECHR). The present case referred to Articles 1, 11 and 12 of the Act of 19 July 1977 that prohibit publishing, circulating and commenting on opinion polls during the week preceding an election. Between the two ballots in the parliamentary elections in 1977, the newspaper *Le Parisien* published an analysis and commentary of an opinion poll under the heading "First round of parliamentary elections – what the French people wanted to say". The newspaper's editor was therefore brought before the regional criminal court on the grounds that he had violated the 1977 Act. He was acquitted, however, as the judges accepted his defence, which was based on the incompatibility of the regulations with Articles 10 and 14 of the ECHR. The public prosecutor appealed against the judgment and the court of appeal in Paris overturned it on 29 June 2000, on the grounds that, although they provided citizens with information, opinion polls carried out before a ballot could also influ-

Amélie
Blocman
L'Égipresse

Court of Cassation (criminal section), 4 September 2001 – Philippe Amaury

FR

FR – Transposition of Directive 97/55/EC on Comparative Advertising

Seven Community Directives on consumer protection have now been transposed into French national law. The first section of the transposing order is devoted to comparative advertising, amending Articles L. 121-8 to L. 121-12 of the Consumer Code in order to take account of the provisions of Directive 97/55/EC of 6 October 1997. The rules governing comparative advertising have been relaxed; this is now defined as "any advertising that compares goods or services by identifying, implicitly or explicitly, a competitor or goods or services offered by a competitor". As previously, such advertising must not be misleading and must be objective. The characteristic(s) compared must be essential, relevant, real and representative.

Mathilde de
Rocquigny
L'Égipresse

Order of 23 August 2001 transposing Community Directives and adapting legislation to Community law on consumer matters, *Journal Officiel* (gazette) of 25 July 2001

FR

of minors in the electronic media should be combined and, where possible, transferred to a single authority. Regarding media concentration, there should be improved co-operation and closer procedural ties between general competition authorities and specific media regulators. In relation to the protection of minors in particular, consideration is being given to the integration of self-regulatory mechanisms and, with varying degrees of intensity, to a possible link with a national regulator. ■

should, on request, make full copies of conversations or data carried via those systems available to the State authorities. This obligation also applies to direct Internet access systems, including those using TV cable networks and so-called "powerline technology" (telecommunications services via electricity cable).

As part of this requirement, all Internet providers would be obliged, at the behest of a criminal prosecution body authorised by a public prosecutor, to monitor the inboxes of e-mail servers. The draft also contains a clause stating that operators must make encrypted data available to investigators in unscrambled form. ■

ence voting. The Court felt that the effects of the opinion polls were covered by the protection of the rights of third parties within the meaning of Article 10(2) of the ECHR. Moreover, the Court felt that, although modern techniques for circulating information (Minitel and Internet) were not confined by national borders, this did not constitute discrimination within the meaning of Article 14 of the Convention. An appeal was lodged against this decision, and the Court of Cassation has now stated clearly that the right to freedom of expression set out in Article 10 of the Convention, which includes the freedom to receive or communicate information, cannot be limited by conditions, restrictions or sanctions provided for by law unless these constitute measures necessary in a democratic society, in particular for the protection of the reputation or the rights of third parties, to prevent the divulging of confidential information or to guarantee the authority and impartiality of the judiciary. In this respect, the Court of Cassation (the highest court in France) found that the provisions of the 1977 Act introduced a restriction on the freedom to receive and communicate information that was not necessary for the protection of the legitimate interests listed in Article 10(2) of the ECHR. This constitutes a remarkable *volte face* in the case-law, as both the Court of Cassation and the Conseil d'Etat have until now always held the 1977 regulations on the publication of opinion polls to be compatible with the provisions of the ECHR. ■

Comparison will now be permitted as long as it refers to goods or services that "respond to the same needs or have the same objective" rather than merely "of the same kind". Price comparisons will no longer be restricted to goods or services that are "identical and sold under the same conditions", which means that comparisons can be made among products that are not strictly identical. In the context of a special offer using comparative advertising, the advertiser will have to fulfil special obligations in providing information (duration of the offer, availability of the goods or services, etc). As Article L. 121-9 of the Consumer Code has been amended, there should be no confusion in the market between the advertiser and a competitor, nor result in the discredit or denigration of brands. Lastly, there is no longer any obligation to communicate the campaign to the competitor involved in advance. ■

RU – Act on State of Emergency Permits Censorship

Natali Budarina
Moscow Media
Law and Policy
Center

On 1 June 2001, the Federal Constitutional Statute "On a State of Emergency" # 3-FKZ entered into force. A Presidential decree will declare a state of emergency if the constitutional rights of citizens and state security are threatened. Such a decree must be approved by the

Federalnij Zakon Rossijskoj Federatzii "O chrezvichajnom polozenii" # 3-FKZ (The Federal Constitutional Act on a State of emergency) was published in Rossijskaja Gazeta daily, on 1 June 2001.

RU

Council of the Federation, the higher chamber of the Federal Assembly. The President may introduce a state of emergency in the whole territory of the Russian Federation or in certain parts of it.

The Act establishes a list of extraordinary circumstances, which require special measures and temporary restrictions to protect citizens' rights; some of these concern the mass media.

Among them are prior censorship, requisitioning and seizure of press outlets as well as loudspeakers and radio transmitters. A Commandant, military or civil official, appointed by the President, establishes a special order to issue journalists' accreditation. He is also empowered to establish additional requirements in regard to journalists' activities in the territory affected by the state of emergency.

The act stipulates that the imposition of these measures is not mandatory. Their necessity is determined by the danger of impending circumstances. ■

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28 November 2001

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