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INTERNATIONAL

UNCITRAL

UNCITRAL International Courts of Arbitration: Awards in *TV Nova* Case

Jan Fučík
Broadcasting Council Prague

On 3 and 13 September, UNCITRAL (United Nations Commission on International Trade Law) International Courts of Arbitration in London and Stockholm published their decisions in the cases of Lauder v. the Czech Republic and CME Czech Republic B.V. v. the Czech Republic.

The background to both cases is the dispute over television broadcaster *TV Nova* (see IRIS 2001-4: 2). Due to restrictions under Czech law, which states that foreign investors may only own minority shareholdings in companies that hold a TV broadcasting licence, *Central European Media Enterprises* (CME) helped Vladimir Zelezny to acquire such a licence and to form the broadcasting company *TV Nova*. Following certain disagreements, *CME* lost its influence over *TV Nova*.

In 1999 Ronald S. Lauder, a co-owner of *CME*, initiated arbitration proceedings against the Czech Republic with the UNCITRAL Court of Arbitration in London. He claimed that the Czech Republic had breached the 1991 Treaty between the United States of America and the Czech and Slovak Federal Republic concerning the Reciprocal Encouragement and Protection of Investment by failing to protect his investments in the commercial TV sector. He argued that the Czech Republic should therefore award a broadcasting licence or damages for lost investments to his company, *Ceska nezavisla televizní společnost* (*CNTS*), which until the split with Zelezny had run the technical operations of *TV Nova*. The Court of Arbitration in London concluded that the Czech Republic had indeed, through the aforementioned provision of its broadcasting law, failed in its duty to refrain from arbitrary and discriminatory measures. However, it ruled that further breaches of the Treaty, particularly a failure to protect investments, had not been committed and therefore dismissed the claimant's demands.

The Court of Arbitration in Stockholm, on the other hand, with which *CME*, as a company established under Dutch law, had initiated proceedings on the basis of a similar 1991 Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic, reached a different verdict. The Court upheld the claim that the Czech Republic had breached the Agreement by failing to offer adequate protection of investments. It particularly condemned the aforementioned legislation and the resulting obligation for Dutch investors to establish a company structure which meant they risked losing their influence over the (Czech) licence-holder. The level of damages will be decided at a later date, but will be equivalent to a fair market valuation of *CME's* investment. *CME* itself estimated the value of its investment to be USD 500 million. An appeal is unlikely, although the Czech government will take the case to the Swedish courts. ■

Awards of the UNCITRAL Courts of Arbitration in London and Stockholm, available at: http://www.cnts.cz/doc10/en/00.htm

EN

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EPRA

Overview of 14th Meeting

Emmanuelle Machet
Secretary to EPRA

The European Platform of Regulatory Authorities (EPRA) held its 14th meeting on 27-28 September in Malta, at the invitation of the Broadcasting Authority of Malta. Over 90 representatives from 41 regulatory authorities responsible for broadcasting throughout Europe met to exchange information and experience on European and national regulatory issues in the field of radio and television.

Among the various topics that were discussed during the meeting, two are particularly worth highlighting. The main topic on the agenda was the regulation of television advertising in light of the future review of the "Television Without Frontiers" (TWF) Directive. The Head of Sponsorship of the UK Independent Television Commission, discussed the regulation of some important advertising developments such as interactive advertising, virtual advertising, split-screen and all-advertising channels. The Deputy Director of the European Consumers' Organisation (BEUC) dealt with the issue of commercial communication and children from a consumer protection point of view. The European Affairs Commissioner of the German *Direktorenkonferenz der Landesmedienanstalten* (the Directors' Conference of the association of German regulatory authorities for broadcasting - DLM) focused on concrete suggestions to modify the advertising provisions of the TWF Directive. The discussion showed that even though most EPRA members were sympathetic to the idea of simplifying existing advertising rules and supported a degree of deregulation, a consensus could not be reached on concrete measures (such as the abolition of advertising time-limits, or the restriction of advertising during children's programmes).

Another important topic on the agenda was the discussion of the pros and the cons of convergent regulatory authorities. Four years after the publication of the Green Paper on Convergence, there is a growing trend across Europe for nationally-based regulatory agencies to move towards the creation of a single or "convergent" body at the national level; or, at least, towards some form of structural reorganisation or simplification of the existing regulatory structures. However, most EPRA members had reservations about the idea of a convergent or single regulatory structure.

EPRA was set up in April 1995 in Malta with the aim of enabling representatives of regulatory authorities to meet regularly in an informal way to exchange information about national and European media regulation and to discuss practical solutions to legal problems related to the interpretation and application of media regulation. At present, 42 regulatory authorities are members of EPRA. The European Commission (DG Education and Culture) and the Council of Europe (Media Division) have the status of permanent observers. The next meeting of EPRA is scheduled for 16-17 May 2002 in Brussels, at the joint invitation of the Belgian regulatory authorities. ■

EPRA Press Release, available at:
http://www.epra.org/content/english/press/2001malta.html
EN-FR

COUNCIL OF EUROPE

Committee of Ministers: Convention on Cybercrime Adopted

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

On 8 November 2001, the Committee of Ministers of the Council of Europe adopted a Convention on Cybercrime (see IRIS 2001-5: 3, IRIS 2001-7: 2 and IRIS 2001-9: 4). This is the first international treaty on criminal offences committed on the Internet and other computer networks. It will be opened for signature at Budapest on 23 November at an international conference on cybercrime. The treaty will enter into force upon ratification by five States, including at least three member States of the Council of Europe. ■

Convention on Cybercrime, adopted at the 109th Session of the Committee of Ministers, Strasbourg, 7-8 November 2001, available at:
http://www.coe.int/t/E/Committee_of_Ministers/public/General_Information/Sessions/e_CM(2001)144.asp
EN

EUROPEAN UNION

Council of the European Union: Common Positions on Proposed Communications Legal Framework

On 17 September, the Council of the European Union adopted several common positions on the set of Directives proposed by the Commission (see IRIS 2001-6: 3) concerning electronic communications and forwarded them to the Parliament in preparation for a second reading. Some of the amendments made by the Council are particularly relevant to the audiovisual sector.

Of particular interest in this respect is Article 31 of the Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) as amended by the common position (Article 26 in the Commission's version). This Article authorises Member States, under certain conditions, to impose "must-carry" obligations on network operators with regard to broadcasting services. However, such obligations should only be imposed at national level where they are necessary to meet clearly-defined general interest objectives and should be proportionate and transparent. The Member States should, in future, check regularly that existing obligations meet these criteria. The original wording of paragraph 1, which had been heavily criticised because it only made provision for obligations to be imposed on a temporary basis, has therefore been altered. Paragraph 2 establishes a duty to compensate companies on which "must-carry" obligations are imposed. The common position, however,

merely states that Member States may determine appropriate remuneration if necessary.

With regard to the proposed Directive on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), the common position includes a number of amendments concerning future access to digital TV. The Commission had already recognised that open access obligations might, in future, have to be brought into line with new technological and market developments. In order to remain flexible in case of further developments in decoder technology, the Commission proposed in its draft Directive a comitology procedure in which market players and the Communications committee should be consulted with regard to such developments in order to clarify the need for the regulations to be adaptable. However, the Council thought this proposal on its own was too rigid. A new sub-paragraph Article 5 (1) (b) was therefore added to the draft Directive, authorising national regulators to impose access obligations on operators of conditional access systems and related services in order to guarantee access under fair, reasonable and non-discriminatory conditions. "Related services" include, in particular, Application Program Interfaces and Electronic Program Guides (APIs and EPGs). ■

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The Council's common positions are available at:
http://www.europarl.eu.int/commonpositions/2001/default_en.htm

DE-EN-FR

European Commission: State Aid Rules to Public Service Broadcasters Clarified

The European Commission recently adopted in principle a Communication setting out how State aid rules should be applied to the public service broadcasting sector.

The Communication requires States to provide a clear and precise definition of the public service remit, where such a definition is not already in existence. It allows States to define this remit, and to provide for the financing and general organisation of the public broadcasting sector, in a manner that would give due recognition to relevant national specificities.

All of this is, however, subject to the important proviso that any measures adopted for the financing of public service broadcasters will have to conform to certain standards of transparency in order to allow for the assessment of the proportionality of such measures. The Communication is underpinned by the aims of controlling possible abusive practices and avoiding overcompensation. To this end, the Commission is mandated to intervene whenever a distortion of competition arises from State aid that cannot be squared with the definitional requirements of "public service", as set out by the State in question. The concerns that the Communication seeks to address are grounded in reality: the Commission is presently involved in formal State aid procedures regarding public service broadcasters in a number of States.

In the same vein, "the limitation of public funding to what is necessary for the fulfilment of the public service mission" (a criterion synopsised as "proportionality") is also of central importance. So, too, is "the formal entrustment of the public service mission to one or more undertakings by means of an official act." The corollary of this is that the monitoring of State aid to public service broadcasting ought to be carried out by an entity that is independent of such undertakings.

The Communication is not without obligations for public service broadcasters either. It elaborates, for instance, the criteria to be followed to ensure that the accounts of such broadcasters for their public service and non-public service activities are kept separate (as required by the so-called "Transparency Directive" (Commission Directive 80/723/EEC of 25 June 1980 (as amended)). ■

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Communication from the Commission on the application of state aid rules to public service broadcasting, available at:
http://europa.eu.int/comm/competition/state_aid/legislation/public_broadcasting/communication/en.pdf

"Commission clarifies application of State aid rules to Public Service Broadcasting", Press Release No. IP/01/1429 of the European Commission of 17 October 2001, available at:
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/1429|0|RAPID&lg=EN

DE-EN-FR

European Commission: Development of Broadband Access Platforms in Europe

A study has recently been concluded on behalf of the European Commission to identify which of the available technologies capable of providing access to digital content might provide the best high-speed access platform for European homes and small/medium enterprises (SMEs).

To this end, the legacy of existing technologies, current scientific boundaries, socio-geographic and socio-economic factors are all considered in the study. Furthermore, it compares the current situation in each of the EU Member States as regards the others, and the EU as a whole with the US and Japan.

The study distinguishes three kinds of platforms that play a role in the digital access market. They are referred to as the narrowcast legacy, the broadcast legacy and the alternative technologies.

The narrowcast technology arose from an era when telecom operators were analog telephone operators, instead of the new content providers that they are now becoming. This requires new charging structures based on consumer value rather than cost. Products of this legacy are, *inter alia*, ISDN (Integrated Services Digital Network), leased lines and ADSL (Asymmetric Digital Subscriber Line).

The digital upgrading of existing broadcasting technologies such as terrestrial transmission, cable and satellite, makes it possible to transmit more content in an interactive way. This leads to the blurring of the boundary between broadcasters and telecom providers.

Besides the legacy access platforms, there are the alternative access platforms. These were designed with the future of digital communication in mind and include fibre-optic and fixed-wireless access. Fibre-optic provides the fastest and most reliable means of transmission of digital information, but the realisation of its full potential has been hampered by economic and competitive barriers.

The popularity of the Internet has led to a growth in the use of broadband access platforms by households and SMEs. According to the report, the majority of the European broadband market will be captured by ADSL and digital cable. It predicts, however, that ADSL is likely to overtake cable as the main access platform.

Compared to Japan and the US (which is still the world leader in broadband development), Europe has a

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relatively difficult market: there are many national differences within the EU, which have to be taken into account when drawing up a strategy for the development of access platforms across Europe.

The development of broadband access is likely to be most successfully developed in those EU Member States that have the highest Internet penetration levels; have been the fastest in liberalising their telecom market and have the highest level of cross-platform competition. Which access platforms will eventually dominate the European market is not so much a technical question as a financial one, with the consumer being the decisive factor.

The report recognises an important role for governments in the development of broadband access platforms in the future. It makes certain recommendations. The demand for broadband should be stimulated by encouraging the widest possible roll-out of all platforms and the possibility of low-cost access. European-wide business strategies should be encouraged by harmonising the regulatory environment across the EU, with regard to broadband deployment. The demand for digital broadcasting should be stimulated and in the long-term, "a clear vision toward universal fibre-optic transmission" should be provided. The possibilities of Fixed Wireless Access and Optical Wireless Access are also identified as being worthy of investigation as alternatives to laying new physical infrastructure to all households and SMEs. ■

"The Development of Broadband Access Platforms in Europe: Technologies, Services, Markets", Report Prepared by BDRC Ltd. for the European Commission (Directorate General Information Society), August 2001, available at: http://europa.eu.int/information_society/eeurope/news_library/new_documents/broadband/index_de.htm

EN

NATIONAL

BROADCASTING

AL – Shijak TV Ceases unauthorised Transmission of Football Matches

Shijak TV, the first private television in Albania, stopped broadcasting European Champions League and Italian Championship football matches during October, which had been transmitted without authorisation.

The stoppage immediately followed the decision of the Albanian Republic Court of Appeal confirming the decision of the Court of First Instance (No. 2822 of 23 July 2001, see IRIS 2001-9: 6) according to which *Media* + A.E, proprietor of *Shijak TV,* is obliged to pay compensation to *Media 6,* A.E, proprietor of the national broadcasting station *Klan,* estimated at USD 200 000.

Hamdi Jupe
Albanian Parliament

After the decision of the Court of Appeal Gezim Ismaili, president and sole owner of *Shijak TV*, said that he will appeal to the High Court. He claimed that the Albanian law "On copyright", being the legal basis for the decisions of the courts against *Shijak TV,* does not include the transmission of football matches on television. He therefore asked the Albanian Parliament to revise the Law on Copyright.

Actually Albanian Copyright Law (No. 7564 of 19. May 1992) does not mention the right of transmission at all. The law was adopted in 1992 and until 1995, a period when there were no private television stations in Albania, had been changed several times.

The protection of copyright in the field of the audiovisual productions is an obligation derived from Albania's membership of the World Trade Organisation (WTO). ■

BE – Ban on RTL-TVI Programme Containing Images of Prisoner

In a judgment of 20 September 2001, the Brussels civil court banned a television programme of the commercial television station RTL-TVI. The film was a reconstruction of a hostage-taking and escape attempt by a prisoner, Peter C., who was sentenced to death some 20 years ago, but whose sentence was subsequently commuted to life imprisonment (forced labour).

The failed escape attempt by Peter C. took place in 1984 and the RTL-TVI programme contained some authentic images from that time, along with images of reconstructed scenes played out by actors, with the main actor bearing a strong resemblance to Peter C. The impugned film was broadcast on RTL-TVI in 1993. As Peter C. had not given his authorisation to use his image in this RTL-TVI film, he complained before the civil court of a breach of his personality right in his own image.

He sought moral damages and a court order to prevent the film from being rebroadcast. The Court recognised that a prisoner can exercise his non-patrimonial rights, such as his rights in his image and his right to privacy. It was also recognised that the film was not related to reporting on an important social issue and that a prisoner has a right to be forgotten ("*un droit à l'oubli*"). The judgment underlines that a person involved in a court case can, for that very reason, belong to the public sphere. In such circumstances, authorisation is not needed for the reproduction of his image as a public person in the context of news reporting. However, the use of a prisoner's image many years later is restricted, as a prisoner has a right to withdraw from the public sphere, and also for the purpose of his re-integration into society.

It is surprising that moral damages were awarded not only against RTL-TVI, but also against the Belgian State, represented in this case by the Minister for Justice. The Court was of the opinion that the prison authorities should not have given authorisation to film inside the prison where Peter C. was detained, or any logistical support for the production of the reconstruction of the escape attempt in 1984, as the prison authorities were aware that the authorisation of Peter C. had not been obtained to make the RTL-TVI programme. According to the judgment, the prison authorities should also have asked for the authorisation of Peter C. or should have deemed it a condition for RTL-TVI that any identification of Peter C. in the film would be rendered impossible. ■

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

Peter C. vs. NV RTL-TVI and the Belgian State, represented by the Minister of Justice, nr. AR 93/4069/A, *Rechtbank van eerste aanleg te Brussel (20ste Kamer)* (The Court of First Instance of Brussels (20th Chamber)), 20 September 2001, not yet published

NL

BE – Transposition of two Directives in Brussels

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Although in Belgium the individual Communities (French-, Flemish- and German-speaking) are in theory responsible for audiovisual matters, the Brussels region is an exception, as the Communities' decrees only apply there in respect of those institutions exclusively connected with a particular Community (eg radio or television channels broadcasting exclusively in either French or Flemish). In contrast, other institutions (as would be the case of a television channel broadcasting in another language, and as is the case of operators of cable networks which are by definition multilingual) do not fall within the responsibility of the Communities, remaining within that of the federal (national) legislator.

Thus on 30 March 1995, the federal legislator adopted legislation on the networks for the distribution of broadcast programmes and the exercise of broadcasting activities in the bilingual region including Brussels (the capital) and its surrounding area, effecting in particular – albeit somewhat late – the transposition of the first "Television without Frontiers" Directive into national law.

This act was subsequently amended by a further act on 8 July 2001, the main purpose of which was to transpose into national legislation Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals and Directive 97/36/EC of 30 June 1997 amending the "Television without Frontiers" Directive. Here again, Belgium is rather behind in transposing directives concerning audiovisual matters into the legislation covering its capital. ■

Act of 8 July 2001 amending the Act of 30 March 1995 on networks for the distribution of radio and television broadcasts and the exercise of broadcasting activities in the bilingual region of the capital, Brussels, published in the *"Moniteur belge"* [official gazette] of 10 August 2001 (p. 27244) – http://www.moniteur.be

FR-NL

A consolidated version of the Act of 30 March 1995 and its amendments is available at: http://www.belspo.be/belspo/ostc/geninfo/publ/pub_ostc/tv/audio_fr.pdf

FR

CH – Satellite Broadcasting of Local Radio Restricted

Oliver Sidler,
lawyer, Zug

The Swiss *Bundesrat* (Council of Ministers) has rejected complaints by two local radio stations, who wanted to broadcast their programmes unencrypted via the *Hotbird3* satellite. The court of first instance (*UVEK*) granted the applications in principle, on condition that the signals were transmitted in encoded form. Otherwise listeners across central Europe and all over Switzerland would have been able to tune in. This would have been a clear breach of the licences awarded to both local radio stations. Under the *UKW-Sendernetzplanung* (FM transmitter network system), licences are restricted to a clearly-defined geographical area.

The complainants argued that the high cost of encoding equipment (around CHF 70,000 with 10 aerials) made satellite broadcasting virtually impossible for local radio stations. However, the *Bundesrat* thought that the so-called three-level model (local/regional, national/language regional and international stations) was decisive. This is a cornerstone of the *Radio- und Fernsehgesetz* (Radio and Television Act), which would be undermined if local radio stations were to broadcast in unencoded form via satellite. Any amendment to this model would have to be made by the legislature. ■

CZ – Licence for *Radio Twist* Refused

Jan Fučik
Broadcasting Council Prague

With many commercial radio licences due to expire in 2001, the Broadcasting Council issued new licences at the end of June. In contrast to the new version (see IRIS 2001-7: 8), the previous Broadcasting Act, which was valid until 3 July 2001, made no provision for broadcasting licences to be extended. Most of the licences issued in June were awarded to existing licence-holders on the basis of the old Broadcasting Act, although nobody is automatically entitled to a licence. Under the previous Act, the Broadcasting Council had to consider the maintenance of diversity of opinion and support for the culture of national minorities, including the Slovakian minority, when issuing licences (section 10.4 of the old Broadcasting Act). However, despite political support, an application from the Slovakian radio station *Radio Twist*, which fulfils the requirement of being established in the Czech Republic, was rejected. A new, previously unknown operator was awarded a licence for *Radio Twist*. ■

Broadcasting Council press release, available at: http://www.rrtv.cz/tiskove_zpravy/tz071.html

CS

DE – Media Regulation Reforms

After several meetings held in September and October, the Governments of the *Bundesländer* (Heads of the State and Senate Chancelleries and Minister-Presidents) agreed on the principles of a new regulatory framework for the media, mainly broadcasting, at their conference in Saarbrücken at the end of October.

Whereas a new common standard for the protection of minors is to be laid down for all types of media and enforced by each individual *Land* (see IRIS 2001-9: 14), the reform of media supervision in general is also under discussion. To this end, the *Land* Minister-Presidents approved the idea of setting up so-called "central commissions" to deal with the monitoring of content, digital access and media concentration. As organs of the *Landesmedienanstalten* (*Land* media authorities), these commissions would be given decision-making powers. It has not yet been decided how they should be set up and whether their members should be appointed or elected, although a possible model is the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Media Concentrations Commission - *KEK*), whose members are appointed by the various *Land* Minister-Presidents. The extent to which the *Landesmedienanstalten* will be represented within these bodies remains to be determined, along with exactly which tasks will in future be entrusted to their committees, which are composed of representatives of relevant interest groups.

With regard to the protection of minors, the self-

regulatory bodies are to be given new powers. These bodies, which were established by law, will now be given responsibility for monitoring broadcasting and other electronic media; the media authorities will then in turn monitor the supervisory activities of the self-regulatory bodies. Media concentration regulations will be amended and incentives offered to operators of regional programme windows on national channels.

It was also agreed that, following the sale of the broadband cable network by *Deutsche Telekom AG* to foreign investors, developments in this area should be closely monitored; immediate action to protect broadcasting diversity on fully- and partially-digitised cable networks was considered unnecessary. Incidentally, it is currently being discussed whether, by means of an authorisation clause in the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement), the regional legislators might be empowered, if necessary, to initiate ahead of time the transition to digital terrestrial television by the *Landesrundfunkanstalten* (*Land* broadcasting authorities), *ZDF* and *Deutschlandradio*.

Finally, consideration is being given, in connection with the description of the broadcasting authorities' role, to whether a self-regulation model similar to that used by the BBC might be used by German public broadcasters. A reform of the licence fee rules is also being suggested, whereby individual households or companies would be subject to the fee rather than each individual piece of receiving equipment, as is currently the case. ■

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Institute of European Media Law (EMR) Saarbrücken

Decisions of the *Ministerpräsidentenkonferenz* (Conference of Minister-Presidents), October 2001, available at:
www.mpk.saarland.de/medien/inhalt/MPK-beschluesse.pdf
DE

FR – Call for Vigilance on the Part of the Audiovisual Media in Handling International Events

In its role as the guarantor of pluralism and ethical presentation of news, the *Conseil supérieur de l'audiovisuel* (CSA – official regulatory body) called on all radio and television companies on 3 October to exercise extreme vigilance in handling international events since the terrorist attacks in New York. While praising the discretion and control exercised by most of the audiovisual media in recent weeks, the CSA's Chairman has asked them, in carrying out their editorial responsibilities and having regard to both the regulations in force and their negotiated undertakings, to maintain respect for the principles of freedom, tolerance, dignity of the individual – in particular victims – and for republican values. The same requests were made in 1991 during the Gulf War and again in 1995, when there was a series of terrorist attacks in Paris – prudence and carefulness in dealing with the facts, checking information and indicating sources, and protection of the image of wounded people and witnesses. The recommendation places particular emphasis on the risks of "things getting out of hand" which are more of a problem for the type of broadcast where viewers or listeners are invited to comment on current events, give their opinion or in some cases report on their own experiences. Those in charge will therefore have to ensure that, in general, the programmes do not in any way fuel any tensions or antagonisms that may be stirred up by international events. ■

Charlotte Vier
Légipresse

CSA recommendation of 3 October 2001
FR

FR – New Agreement for TF1

The company *Télévision française 1* (TF1) signed a new agreement with the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory authority – CSA) on 8 October. The agreement – which will come into force on 1 January 2002 and be valid for five years – has been reached at the end of much work and rounds of negotiations and follows on from the renewal of TF1's authorisation last April without calling for applications from any other parties. The new agreement is much more detailed, and has taken into account the wishes expressed by the CSA, particularly regarding ethical practice, and those of TF1, mainly regarding changes to programming.

The main changes in the agreement appear mainly in the wording of the channel's ethical obligations. A number of new features have been taken into account – the appearance of "reality television" firstly, with the demand that the participation of non-professionals in games or studio programmes or entertainment shows should not carry any requirement for them to waive their fundamental rights (rights regarding the use of their image or protecting their privacy). Article 11 of the new agreement in particular was directly inspired by the problems encountered when things got out of hand with the first programme of this kind (*Loft Story*), broadcast last spring on M6.

Discussion on the presumption of innocence, followed by the corresponding Act of 15 June 2000, also had an effect on the agreement; Article 8 of which now requires the channel to abide scrupulously by the spirit of the text.

In more general terms, the new agreement emphasises the demand for political and general information and news to be independent of the company's shareholders and pays particular attention to the processing of images, with any modifications being clearly indicated and advance warning being given when particularly tragic scenes are to be broadcast.

There has also been a considerable change in the provisions concerning programmes for children and young people. TF1's obvious desire to draw a clearer line between advertising and actual sponsorship of its programmes is reflected in Articles 45 and 46. The obligations of production and distribution have been maintained; the latter may be re-considered when terrestrially-broadcast digital television is introduced.

The other new features of the new agreement cover advertising on the air for TF1's own tie-in products or for the group's activities (production of video cassettes, satellite package, etc). Article 25 requires moderation of tone and measure in presenting these activities, sticking to a strictly informative presentation.

Lastly, as far as the main points of the new agreement are concerned, there are stricter obligations to inform the CSA of any change in its shareholders and to provide financial information on the group in general. ■

Charlotte Vier
Légipresse

Agreement of 8 October 2001 between the CSA and the company *Télévision française 1*
FR

FR – CSA's Opinion on the Proposed Decree on Services Broadcast Terrestrially in Digital Mode

Mathilde de Rocquigny
Légipresse

With a covering letter dated 31 July 2001, the Minister for Culture and Communication sent to the CSA (*Conseil supérieur de l'audiovisuel* – official regulatory body) the draft of a decree concerning television channels broadcasting terrestrially in digital mode. After gathering comments from the main parties concerned, the CSA met in plenary session on 2 October 2001 and delivered its opinion on the draft.

The opinion starts by making general remarks. The CSA wishes to see the increase in the obligations spread out over a longer period than the five years proposed by the Government. It feels in particular that it is necessary to facilitate the migration of services away from cable and satellite towards terrestrial digital mode. This should be done by ensuring that scheme for the future terrestrially-broadcast digital television services for which a charge is made will be as close as possible to the present regulations applicable to cable and satellite services. The CSA advocates the use of negotiated agreements rather than regulations, as it feels these are a more appropriate way of taking into account the specific nature and situation of each service.

With regard to advertising, the CSA feels that the encrypted channels should be able to broadcast advertising segments throughout their programming, and it also advocates a gradual, concerted opening up of those sectors where advertising is not permitted. Regarding production obligations, the CSA feels that these should primarily encourage the channels to invest in new programmes. It recommends that the decree should enable it to negotiate with the editors a specific undertaking on the production of European works not shown elsewhere, or works originally made in French, in return for lowering the level of the obligations imposed on cinema film and audiovisual production.

The Minister Catherine Tasca announced that this decree, together with four others laying down the rules applicable to the new services of terrestrially-broadcast digital television, demanded "thorough work in conjunction with the professionals in the sector" and as a result it would not be published until mid-December, ie two months late; the CSA, understanding the need to postpone publication, also needs to postpone the closing date for applications for these services, set at 45 days following publication of the decrees. It will decide on the new closing date for applications once the decrees have been published in the *Journal officiel* [official gazette]. ■

CSA's opinion of 2 October 2001
FR

FR – ARTE and BBC Announce Co-operation

Alexander Scheuer
Institute of European Media Law (EMR) Saarbrücken

During the Mipcom fair held in Cannes at the beginning of October, the Franco-German cultural broadcaster ARTE announced that it would in future be making joint productions with the BBC. An increasing number of co-productions will be made in the next few years, particularly documentaries on cultural, artistic and social themes. As a result, the ARTE network, which unites various European public broadcasters through association and co-operation agreements, now includes an English-language representative. ■

http://www.artepro.com/fr/CtrlActualites?idActu=1390249&pageTo=HOMEACTUDETAILS
FR

GB – Broadcasters' Disability Network and ITC Launch New Guidelines

David Goldberg
deeJgee Research/ Consultancy

Supported by the Disability Rights Commission, new guidelines for television and radio programme producers on the issues of the practicalities and benefits of working with people with disabilities, entitled "Adjusting the Picture", were published at the end of October by the Independent Television Commission (ITC) and the Broadcasters' Disability Network.

The guidelines cover a range of issues, e.g., language issues ("talking with" and "talking about" disabled people); employment matters; programme-making (stereotypes, representation and contributors in a variety of settings); and what considerations should be taken into account regarding audiences which may include disabled persons, e.g., "physical access checklist", "adjustments for studio audiences", "audiences at home" and "programme support".

Possibly unique, the Broadcasters' Disability Network was established in 1997 and "brings together the UK's major broadcasters to explore and address disability as it relates to the media industry." Membership includes the BBC, BSkyB, Carlton TV, Channel 5, Channel 4, Discovery Networks Europe, GMTV, Granada Media, Pearson, PACT (Producers' Alliance for Cinema and Television), Turner Broadcasting System, and United Broadcasting and Entertainment. ■

"Adjusting the Picture, a Producer's Guide to Disability" can be accessed from "ITC and BDN Publish New Guidance on Working with People with Disabilities", Independent Television Commission News Release No. 61/01 of 29 October 2001, available at:
http://www.itc.org.uk/news/news_releases/show_release.asp?article_id=526
Further information on the Broadcasters' Disability Network is available at:
http://www.employers-forum.co.uk/www/guests/about/initiatives/broadnet.htm

IE – Broadcasting - New Ownership and Control Policy

In October 2001, the Broadcasting Commission of Ireland (BCI) announced details of its new ownership and control policy for commercial broadcasting. The Radio and Television Act 1988 requires the BCI to formulate and apply a policy that takes account of plurality of ownership and diversity of content in broadcasting. The Broadcasting Act 2001 (see IRIS 2001-4: 9), which makes pro-

vision for the introduction of a host of new analog and digital radio and television services, also addresses the issue of diversity of sources and content of programming. In April 2001 the BCI decided to undertake a review of its existing policy in that regard. Over the summer it engaged in wide-ranging consultation with the broadcasting sector and the public (see IRIS 2001-8: 11).

The revised policy sets out the BCI's guiding regulatory principles, its statutory obligations, policy objectives and policy details. The guiding principles recognise the importance of the BCI being in a position to respond flexibly and adequately to the unforeseen and often complex questions that will emerge in the developing broadcasting landscape. In fulfilling its statutory obligations, the BCI aims to put the public into a position which gives it access to a diversity of programming from a variety of sources. It will do so "in the form of broadcasting services of such number and categories as will best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity". The BCI aims to develop and operate a simple, flexible but comprehensive regulatory scheme, capable of responding to technological and market developments, as well as national and local conditions.

In terms of detail, the BCI takes the view that it would be acceptable for any one investor to have control of, or substantial interests in, a number equivalent to 15% or less of the total number of commercial sound broadcasting services licensed under the 1988 Act. A number equivalent to 15% - 25% would require more careful consideration by the BCI, while over 25% would be unacceptable. The BCI also sets out the criteria it will apply to determine what constitutes a reasonable share of all the communications media available to audiences in a particular franchise area. It also stresses its support for the view, widely espoused by respondents to the consultation paper, that the maintenance of a local ethos (as distinct from local ownership) is a key objective. Non-EU applicants will be required to have their place of residence or registered office within the EU or as otherwise required by EU law. The BCI will also have regard to any reciprocal arrangements in place with other states. Previously the BCI imposed maximum percentages on holdings in broadcast companies. Under its new policy it will consider allowing 100% ownership as long as all the criteria set out in its revised policy are met. ■

Marie McGonagle
Faculty of Law, National University of Ireland, Galway

The Broadcasting Commission of Ireland's Ownership & Control Policy Statement (revised version) is available at: http://www.irtc.ie/ownpolicy.htm

PL – Financial Penalty concerning "Big Brother"-format

The Chairman of the National Broadcasting Council has fined Polish licensee *Polskie Media S.A.* PLN 200.000 (EUR 54 880.22) for breaches of Art. 18 para. 5 of the Broadcasting Act as well as para. 1.2 and para. 2.2 of the Regulation of the National broadcasting Council (NBC) "concerning the special rules for transmitting broadcasts that may threaten the psychological, emotional or physical development of children and teenagers by radio and television programme services". In his Decision of 4 October 2001 the Chairman stated that TV4, a channel that broadcasts a reality show "Gladiators", an adaptation of the "Big Brother" programme, on 21 September at 18:58h showed a very controversial episode, which was contrary to the standards relating to the protection of minors enshrined in the respective legal provisions. As was pointed out in the attached judgment, objections should be raised to the unacceptable and distorted portrayal of relations between men and women, especially in reference to those depicting norms of sexual behaviour. It was also found that the programme in question contained obscenity and offensive words. On the basis of an in-depth analysis, the Chairman of the NBC decided that the editorial attitude of the station towards the content of the episode of "Gladiators" was highly negligent, taking into account the transmission time. According to aforementioned Art. 18 par. 5 Broadcasting Act "[p]rogrammes or other items which may threaten the physical, mental or moral development(...) may not be transmitted between 6:00h and 23:00h.".

The penalty imposed on *Polskie Media S.A.* should be paid to the NBC within 14 days from delivery of the Decision. ■

Hanna Jedras
Dept. of European Integration and International Relations National Broadcasting Council of Poland

***Decyzja nr 15/2001 z dnia 4 pazdziernika 2001r* (Decision 15/2001 of 4 October 2001)**
PL

PT – High Authority Disagrees with Nomination of New Director General of RTP

On 4 October 2001, the *Alta Autoridade para a Comunicação Social* (High Authority for the Media) issued for the first time a negative statement regarding the appointment of a General Director to the public service television company, *Radiotelevisão Portuguesa* (RTP).

According to Article 4 of *Lei da Alta Autoridade para a Comunicação Social* (Law nº 43/98 of 6 August), the nomination of the Director General of RTP requires a prior, reasoned and public judgment by the High Authority for the Media. In its statement, the High Authority considered that the changes in the functions of the new Director General would go too far, showing a lack of strategic orientation in RTP and giving over-broad powers to the new Director. The High Authority also stated that the professional merits of the candidate, Emídio Rangel, were not disputed, but it considered that when he had been Director General of the commercial television station, *Sociedade Independente de Comunicação* (SIC), Emídio Rangel had promoted news and programming which were the antithesis of public service television's obligations and duties.

The High Authority's judgment is not binding and Emídio Rangel was nominated by the company's board as its Director General. ■

Helena Sousa
Departamento de Ciências da Comunicação Universidade do Minho

***Comunicado da Alta Autoridade para a Comunicação Social de 4 de Outubro de 2001* (Statement of the High Authority for the Media of 4 October 2001), available at: http://www.aacs.pt/bd/Comunicados/20011004.htm**
***Lei da Alta Autoridade para a Comunicação Social* (High Authority for the Media Law), Law nº 43/98 of 6 August, available at http://www.aacs.pt/legislacao/lei_aacs.htm**
PT

RO – Sanctions for Possible Breach of Programming Guidelines?

Mariana Stoican,
Radio Romania International

The *Consiliul Național al Audiovizualului* (CNA), the body responsible for monitoring the electronic media, has announced that it will be submitting an interview programme broadcast on public radio for expert analysis. It is alleged that the programme breached programming guidelines.

This move follows an interview conducted by a journalist with a senator representing an extremist and ultra-nationalist opposition party. Even in the early stages of the interview, the senator had repeatedly accused Romania of supporting Islamic groups in 1995 and criticised the current government.

Since the senator had made similar comments prior to the interview, both the *Administrația Prezidențială* (President's Office) and the *Serviciul de Potecție și Pază* ("Protection and Supervision Service") had already denied these accusations before the interview took place. Consequently, on the basis of paragraphs 39 and 40 in connection with Article 2 of Act No.48 on Radio and Television Programmes of 21 May 1992, which deals with programming guidelines on subjects such as disparagement of the State, the CNA promised to refer the case to the criminal prosecution authorities.

The interviewer was suspended for one month by the national radio authority because he had not sufficiently distanced himself from the senator's comments. ■

SK – A Strong Effort to Amend the Act on Broadcasting and Retransmission to Reflect Practice

Eleonora Bobáková
International Relations and European Affairs of the Council for Broadcasting and Retransmission

The responsibilities of the Council for broadcasting and retransmission are determined by the *zákon o vysielaní a retransmisii a o zmene zákona o telekomunikáciách* (Act on Broadcasting and Retransmission of 2000). The administrative actions accompanying either the granting of licences for radio or television broadcasting or applied in cases where the violation of legal provisions covering content issues are considered must comply with the procedural rules set out by another provision – the *zákon o správnom konaní* (Act on Administrative Procedure No.71/1967 of Coll.).

After nearly one year of applying the Act on Broadcasting and Retransmission, practical experience has helped identify several reasons to amend the Act urgently as regards the situation where a financial sanction is imposed by the Council for an administrative offence.

Two sanctions can be appealed to the Supreme Court of the Slovak Republic: First, the decision to withdraw the broadcasting licence and, second, the decision to impose a financial penalty.

There was a provision in the previous law (Act on the Pursuit of Radio and Television Broadcasting, which ceased to have effect in 2000) setting the time-limit for taking a decision to impose a financial penalty for an administrative offence at two years starting from when the Council had been advised of a possible violation of the Act. Since this period had included the appeal procedure before the Supreme Court of the Slovak Republic, the time-limit was often found too short to complete the full procedure. This was the reason why the draft of the Act had proposed to extend this period to 3 years. However, and surprisingly, the final version of the relevant provision in the Act has set a one-year term, see Section 64.

The situation resulting from such a short time-limit is problematic, considerably reducing the powers of the Council. The majority of the Council's decisions on fines might be cancelled due to exceeding the proposed time period. Just a few months ago, two decisions of the Council were overturned for that reason. In one case, a fine of SKK two million (app. EUR 48.000) was imposed for violating the provision on the protection of minors (a broadcaster brought screened during prime time an interview with the top Slovak composer and singer, who explained his creativity and success by his addiction to marijuana and other drugs).

Furthermore, another proposed type of sanction – in fact a more effective one in relation to the public – is the announcement regarding the infringement of the law, see Section 65. This announcement has to be broadcast on the programme service of the broadcaster concerned at a time and in wording set by the Council. However this sanction can be applied in only few cases laid down by the Act.

Accordingly, preparatory proceedings being undertaken by members of the Parliamentary Committee for media and culture in regard to the amendment of the Act, might pay special attention to ensuring that a sufficiently long term is set to allow for all necessary steps of the administrative procedure to be completed, and to make the decision on financial sanction enforceable. ■

YU – Roma Radio Station Banned

On 20 September 2001, the Federal Telecommunication Inspector imposed a ban on the operation of Niš-based radio-television station *Nisăva,* the only Roma broadcaster in Yugoslavia. This is the first case of an actual administrative ban being imposed since the change of government in late September/early October last year.

The reasoning given by the Inspector is that the station does not possess a valid license issued by the competent authority. On the other hand, Mr. Boban Nikolić, a representative of the Roma Association that owns the station, said that the Roma community in the city of Niš considers this decision politically motivated, as part of a broader campaign to assimilate the Roma with the majority of the population. Without disputing the fact that *RTV Nisăva* operated without a license, Nikolić stated that the vast majority of existing stations in Serbia operate in that manner, but only a Roma-run station is ordered off the air.

The Federal Inspector's decision comes in the middle of the discussion about the new broadcasting law. Namely, the Federal and Serbian authorities have (finally) decided to start the procedure for adopting draft media legislation in the Parliament (see IRIS 2001-6: 10). Drafts, made under auspices of the Council of Europe and the OSCE by local experts within the NGO community, provide for an independent regulatory authority to decide which stations may remain on the air and which

Miloš Živković
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are to be banned, all according to the rules set forth in the law. Therefore it is difficult to understand some of the decisions of the Federal Telecommunications Inspection, which continues to arbitrarily ban some stations, but tolerate other stations not having licenses.

One of the conclusions of the round table on the future of broadcasting in Serbia organized in Belgrade by the local NGOs, the Government of Serbia and the Council of Europe and the OSCE on 19 October 2001 stated that the chaos in the area of broadcasting cannot be put in order by individual bans – new regulation and a subsequent campaign by the authorities is necessary for achieving that goal. Given the fact that drafts of the new regulations on broadcasting contain special provisions referring to the rights of minorities, and referring to rights of the civil sector to operate local stations, one could expect that this is the last time that an administrative ban is imposed upon a politically-sensitive radio or television station in Serbia. ■

NEW MEDIA/TECHNOLOGIES

AT – Government E-Commerce Bill Before Parliament

Albrecht Haller
University of Vienna

In order to transpose the EC's so-called E-Commerce Directive into Austrian law, a Federal Act is being drawn up, dealing with certain legal aspects of electronic commerce and the transmission of legal documents (E-Commerce Act - *ECG*) and amending the *Signaturgesetz* (Electronic Signature Act) and the *Zivilprozessordnung* (Code of Civil Procedure). The Government Bill was tabled in Parliament on 23 October 2001 and should be adopted in time for it to enter into force on 1 January 2002.

Essentially, the content of the Bill remains within the limits laid down in the Directive. However, a few of the proposed regulations extend beyond the Directive's minimum requirements. For example, the Bill contains certain provisions on the exclusion of liability for search engines and hyperlinks. ■

Regierungsvorlage betreffend Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt (E-Commerce-Gesetz – ECG) und das Signaturgesetz sowie die Zivilprozessordnung geändert werden
(Government Bill dealing with certain legal aspects of electronic commerce and the transmission of legal documents (E-Commerce Act - *ECG*) and amending the *Signaturgesetz* (Electronic Signature Act) and the *Zivilprozessordnung* (Code of Civil Procedure)).

Section 817 of the *Nationalrat* (National Assembly) Protocol (11th legislative period); see http://www.parlinkom.gv.at/pd/pm/XXI/I/his/008/I00817_.html

DE

CH – Information Society Report Published

Oliver Sidler,
lawyer, Zug

The *Koordinationsgruppe Informationsgesellschaft* (Information Society Coordination Group - *KIG*) has published its third annual report on the state of the Information Society in Switzerland. It reports that, in the last twelve months, significant progress has been made in e-government as well as in the development of a legal framework for e-commerce and digital signatures. Projects such as "e-Tax-Swiss", "Guichet Virtuel" and "e-Voting" have all played their part. Various smaller projects relating to electronic communication with the authorities were also launched. Through the adoption of proposals for a Federal Act on certification services in the field of electronic signatures and on the revision of the federal system for the administration of justice, the requirements for the recognition of digital signatures and the admissibility of electronic instructions were completed.

As far as education is concerned, the creation of a public-private partnership for the Internet represented a major step forward. The *KIG* has also decided to give priority in the coming year to the integration of social groups in danger of exclusion from the Information Society. According to the targets fixed by the *Bundesrat* (Council of Ministers) for a Swiss Information Society, all Swiss residents should have equal access to information and communications technologies. It is also intended that familiarity with the technical and content-related aspects of these technologies should become a basic everyday skill. Statistics on Internet access and usage in Switzerland, however, show that this aim has yet to be fulfilled. For example, women, the elderly, those outside the education system and low-income groups all still have comparatively little access to the Internet. ■

3rd report by the *Koordinationsgruppe Informationsgesellschaft* (Information Society Coordination Group - *KIG*) to the *Bundesrat* (Council of Ministers), 30 April 2001. The report is available at http://www.isps.ch/bericht.htm

DE-FR

DE – New Electronic Signature Decree Adopted

Peter Strothmann
Institute of European Media Law (EMR) Saarbrücken

On 24 October, the Federal Government adopted a new *Verordnung zur elektronischen Signatur* (Electronic Signature Decree), which replaces the Decree in force since 1997.

The new Decree deals in more detail with the provisions of the *Signaturgesetz* (Electronic Signature Act), which entered into force on 22 May 2001. It deals in particular with the obligation for certification service providers to report on their activities and the need for voluntary accreditation of such bodies. It also regulates the content, standards and duration of validity of such certificates, the precautions taken by certification service providers and procedures to ensure that foreign signatures and products are equally secure. The Decree transposes Directive 1999/93/EC of the European Parliament and Council on a Community framework for electronic signatures of 30 November 1999. ■

Federal Ministry of the Economy press release, available at: http://www.bmwi.de/textonly/Homepage/Presseforum/Tagesnachrichten/2001/11176.jsp

DE

DE – Network Monitoring Decree Adopted

On 24 October, the Federal Government adopted the *Verordnung über die technische und organisatorische Umsetzung von Maßnahmen zur Überwachung der Telekommunikation* (Decree on the technical and organisational transposition of measures to monitor telecommunications - *TKÜV*) (see IRIS 2001-9: 15).

The *TKÜV* supplements existing legal provisions under

Peter Strothmann
Institute of European Media Law (EMR) Saarbrücken

which the secrecy of telecommunications, protected by the German Constitution, may be breached. It lays down the technical and organisational precautions that must be taken by operators of telecommunications systems, including so-called public telecommunications systems, in terms of monitoring and recording telecommunications. For example, operators of transmission systems that give subscribers direct access to electronic communications networks (eg direct lines or other broadband services such as DSL or even cable TV) are therefore obliged to take such precautions. However, Internet Service Providers are not required to monitor individual users who access the Internet via their modem or ISDN connection. The Decree applies to all means of communication, including telephone and mobile phone conversations, fax, e-mail and SMS.

The precise details of how the *TKÜV* should be implemented will have to be determined by a Technical Directive, to be drawn up by the *Regulierungsbehörde für Post und Telekommunikation* (Regulatory Authority for Post and Telecommunications) in consultation with industry representatives. ■

Press release from the Federal Ministry of the Economy, available at:
http://www.bmwi.de/textonly/Homepage/Presseforum/Tagesnachrichten/2001/11176.jsp

DE

FR – Court Condemns Unlawful Use of Advertisements on an Internet Site Offering Job Advertisements

Mathilde de Rocquigny
Légipresse

The commercial court in Paris found the Internet site *Keljob* guilty last December of the unlawful use of hypertext links (see IRIS 2001-2: 12). *Keljob*, a free browser for jobseekers, lists offers presented on other sites, and has again been involved in a dispute raised by one of these sites. On 5 September the Regional Court of Paris ordered it to pay a million French francs in damages to the employment advertisement site *Cadremploi* for having made use of the offers it listed without its agreement.

Firstly, the plaintiff company felt that the Keljob site, by reproducing the Cadremploi name in is advertising leaflets and on its site, was guilty of counterfeit. The court noted that the name was being used for commercial purposes and not merely to inform users, and that the company Keljob thereby benefited from the reputation enjoyed by Cadremploi. Moreover, by not limiting itself to referring to Cadremploi as it might in a guide, but by using it to gather and select job advertisements in direct competition with the plaintiff, the company Keljob was indeed counterfeiting the name.

The company Cadremploi also claimed that the Keljob site was infringing its intellectual property rights in respect of its database. The court noted that the company Keljob, which consulted the Cadremploi site each night and selected those offers of interest to it, extracted the substantial elements of the site (for each advertisement – title of post, sector of activity, geographical area, address on the Cadremploi site and URL address). The court decided that the use of these elements from the Cadremploi database without authorisation constituted an infringement of the plaintiff's rights.

On the other hand, the court rejected the plaintiff's claims concerning unfair competition. Cadremploi claimed that Keljob had set up "deep links" – links from its own site leading directly to secondary pages on the Cadremploi site – that were prohibited in that they misinterpreted and misappropriated the content of its site, thereby violating its integrity. The court found that there was no real risk of confusing the two sites as the plaintiff alleged, as an intermediate window indicated clearly to Internet users that they were on the Cadremploi site and could continue browsing there. ■

Regional Court of Paris (3rd chamber, 3rd section), 5 September 2001, Cadremploi v. Keljob

FR

NL – Prosecution of Author of *"Kournikova"* Virus

Rik Lambers
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On 27 September 2001, the author of the infamous "*Kournikova*" virus was given an unconditional sentence of 150 hours of community service by a police court in Leeuwarden in the Netherlands. The fact that he was a first-time offender and that the damage caused seemed to have been limited, influenced the length and nature of the sentence.

The virus, which has been labelled the second-largest ever to be released, infected hundreds of thousands of computers worldwide from 12 February of this year. It was called the "*Kournikova*" virus, as it was hidden in an e-mail with a picture of tennis star Anna Kournikova attached to it. Double-clicking on this Visual Basic virus will cause it to forward itself to all the e-mail addresses in a victim's address book. Browsers infected by this so-called "worm" will also be redirected to a website in the Netherlands on 26 January each year.

Although it spread very quickly, the "*Kournikova*" virus caused little damage compared to the earlier "Love Bug" or "Melissa" viruses. This may be one of the reasons why the State Prosecutor asked for a relatively light sentence (240 hours of community service) at the trial of the author of the virus, a twenty year-old man from Sneek in the Netherlands.

The man was charged with spreading data through a computer network, with the intent to cause damage (Article 350a part 3 of the Dutch Criminal Code). The maximum sentence for the violation of this article is four years' imprisonment or a fine of NLG 100,000. As the case was heard in a police court, the writer could not be sentenced to more than six months' imprisonment.

This is the first time that somebody has been prosecuted in the Netherlands for spreading a computer virus. In other countries, the authors of computer viruses are also rarely prosecuted. The author of the "*Kournikova*" virus turned himself in after realising the damage his creation had caused. He claimed that he had never intended to do any harm, but that he merely wanted to demonstrate the naivety of computer users. He created the virus with a simple worm-making toolkit, software freely available to anyone on the Internet.

The police court found him guilty of a violation of article 350a part 3 of the Dutch Criminal Code, which protects, *inter alia*, the interests of private individuals, institutions and companies in the adequate functioning of the Internet. The author put these interests at risk and violated the privacy of those whose computers were infected by the virus. ■

Judgment of *Arrondissementsrechtbank Leeuwarden (Sector strafrecht)* of 27 September 2001, ELRO-nummer: AD3861, Zaaknr: 17/047068-01, available at:
http://www.rechtspraak.nl/actueel/showdetail_homepage.asp?act_id=4489

NL

NO – First Court Decision on Domain Names

Esther Mollen
Norwegian Research Centre for Computers and Law University of Oslo

Nordhordland herredsrett (Nordhordland County Court – a court of first instance) became the first Norwegian court to rule on a domain name dispute on 20 August 2001. The plaintiff was Sony Computer Entertainment Europe Limited (London), involved in distributing in Europe products manufactured by Kabushikj Kaisha Sony Computer Entertainment (Tokyo). The defendant was Stefan Hilt and his company, Multimedia Import Norge, involved in importing PlayStation computers and software directly from Japan and selling them on the Internet to consumers in Norway using the domain name "playstation2.no".

The plaintiff began proceedings for trademark infringement, after having offered to buy the domain name from the defendant. The plaintiff alleged that the defendant was unlawfully using the domain name and a PlayStation logo on his Internet website.

Nordhordland County Court found that the use of the domain name constituted an infringement of Sony's trademark rights. Sony registered the trademark "PlayStation" and the "PS2" logo at *Patentstyret* (the Patent Office) on 18 April 1996. According to *varemerkeloven* § 4 (Trademarks Act) and article 5 of the EC Trademark Directive, this gives Sony the exclusive right to use the trademark in the course of trade. A parallel importer cannot lawfully use someone else's trademark in a domain name when the wrongful impression is given that there exists a business connection between the importer and the trademark right holder. According to Nordhordland County Court, it is commonly understood that there is a strong connection between the domain name and the rightsholder of the products offered on the website in question. The fact that the plaintiff had put a notice on his website stating that such a connection did not exist failed to change this. Nordhordland County Court therefore found that the plaintiff had legitimate reasons for opposing to the defendant's use of the trademark in the domain name and that such use constituted an infringement of § 4 of the Trademarks Act and article 7 of the Trademark Directive.

In addition, Nordhordland County Court found that the use of the "PlayStation2" image and the "PS2" logo on the website was an infringement of the plaintiff's trademark rights under § 4(3) of the Trademarks Act and article 7(2) of the Trademark Directive. The trademark was used several times without reference to a picture of a particular product. The products sold by the defendant had been produced for the Japanese market. In order to be able to use the (Japanese) game consoles, the defendant installed an adapter on the consoles. Furthermore, customers had to install a so-called "ModChip" on the console after purchasing their PlayStation computers to make them compatible with the software marketed in Europe by the plaintiff. Customers were not clearly informed about any of this. Due to the changes made, the customers do not enjoy Sony's guarantee on the products. These Japanese products were therefore seen as products of a poorer quality than the products covered by the trademark rights.

The case is currently under appeal. ■

***Nordhordland herredsrett*, nr. 01-00103A**
***Lov om varemerker*, 1961-03-03 4, *endret av Lov* 1996-12-20 104 (Trademarks Act No. 4 of 3 March 1961, as last amended by Act No.104 of 20 December 1996), available at:**
http://www.patentstyret.no/niv2index.html?innhold/omps/&omps

NO

http://www.patentstyret.no/english/innhold/legaltexts

EN

First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks. Official Journal L 040, 11/02/1989 p. 0001 – 0007, available at:
http://europa.eu.int/eur-lex/en/lif/dat/1989/en_389L0104.html

DE-EN-FR

NO – Implementation of Directive on Conditional Access

Esther Mollen
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By an Act of 15 June 2001, *Stortinget* (the Parliament) has amended § 262 of the *Almindelig borgerlig Straffelov* (the General Civil Penal Code) on conditional access to radio and television signals so as to include information society services.

The Parliament sought to implement Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access. The Directive calls on individual Member States to provide legal protection for information society services provided for remuneration and on the basis of conditional access (e.g. videogram- and phonogram-on-demand). The aim of the Directive is to ensure that remuneration is paid for the services in question. In order for the Directive to apply, there must therefore be an economic reason for using conditional access.

Under article 4 of the Directive, Member States are obligated to prohibit commercial activities regarding illicit devices that give unauthorised access to protected services. Such commercial activities might, for example, consist of the sale, distribution, manufacturing or maintenance of illicit devices. The amended § 262(1) of the General Civil Penal Code covers all the commercial activities listed in article 4 of the Directive.

The Norwegian legislator felt that it would be insufficient to forbid only commercial activities relating to illicit devices. The (non-commercial) use of such devices is therefore also a criminal offence under § 262(2) of the General Civil Penal Code, albeit a less serious offence than the infringement of § 262(1). Anyone that accesses a protected service without authorisation by means of illicit devices and therefore obtains a profit, or causes the person entitled to remuneration for the service to sustain a loss, can be punished by fines or by imprisonment for up to six months. The offender's gain is seen as the amount of money s/he saved by using the services without paying the authorisation fee requested. Only those who actually access the protected service are punishable. Those who enjoy the service as a result of someone else infringing the protection are not liable for punishment. ■

***Almindelig borgerlig Straffelov*, 1902-05-22 nr. 10, *sist endret av Lov* 2001-06-15 nr. 57 (General Civil Penal Code of 22 May 1902, as last amended by Act no. 57 of 15 June 2001), available at:**
http://www.lovdata.no/cgi-wift/wiftldles?doc=/usr/www/lovdata/all/nl-19020522-010.html&emne=straffeloven&

NO

Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, Official Journal L 320, 28/11/1998 p. 0054 – 0057, available at:
http://europa.eu.int/eur-lex/en/lif/dat/1998/en_398L0084.html

DA-DE-EN

PL – Act on Electronic Signatures Signed by President

On 11 October 2001 the President of the Republic of Poland signed the Act on Electronic Signatures adopted by Parliament on 18 September 2001.

The Act on Electronic Signatures regulates the conditions for the use of electronic signatures and so-called secure electronic signature. The latter is made by a

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secure signature-creation-unit, used to implement the signature-creation data, which establishes whether the document has been amended after signing and protects the document against alteration by a third party. The Act on Electronic Signatures envisages treating an electronic signature as a written signature when it is covered by a certificate provided by a recognised, so-called qualified certification service provider.

The Act also sets out the rules on providing certification services, duties of certification service providers, supervision by the Minister of Commerce over certification service providers, framework for certification policies of qualified certification service providers, provisions on register of qualified certification service providers, measures guaranteeing the security of documents carrying an electronic signature, provisions on the liability of service providers for damage caused and criminal sanctions for abusing the signatures.

The equal treatment of the secure electronic signature as regards written signatures will even enable communication with the authorities in electronic form. The Act provides that within four years from its entry into force, public institutions will have to accept applications and other documents in electronic form, when it is legally required to use the electronic form or a specified standard. ■

***Ustawa z dnia 18 września 2001 r. o podpisie elektronicznym* (Act on Electronic Signatures of 18 September 2001)**

PL

PL – ePolska-Plan adopted

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On 11 September 2001 the Council of Ministers adopted a document "ePolska – Action Plan for the development of the Information Society in Poland for the period 2001 – 2006", which was based on partial strategies prepared by the respective institutions and that followed the action plan included in "eEurope 2002 – An Information Society for All", a document issued by the European Commission (see IRIS 2000-6: 5 and IRIS 2001-7: 4). The programme *ePolska* deals with a number of issues connected with the implementation of the Information Society, taking into consideration developments and realities in Poland. An absolute precondition for realising the aims enshrined in the programme *ePolska* is a broadband, universal, affordable and safe access to new electronic communication networks.

The programme comprises the following aims: preparing society for fast technological changes in the social and economic sphere due to the emergence of the Information Society (e.g. the adaptation of Polish educational programmes to the needs of a science-based society), education of adults in the area of information technologies, promotion of professions connected with the application of these technologies. It foresees the adaptation of the legislative framework to the standards of rapid technological progress and the Information Society age. Moreover, *ePolska* aims at being adaptable to the requirements of the electronic economy. This could be achieved by introducing legal regulations on electronic signature (see above), electronic transactions means, legal protection of databases, providing universal information technologies' service, and on electronic commerce. An additional advantage for the development of the Information Society in Poland would be the implementation of an electronic procedure in public procurement, facilitating on-line access to public administration, enhancing participation of small- and medium-size enterprises in e-commerce as well as the elaboration of models for digital media in Poland. ■

ePolska – Action Plan for development of the Information Society in Poland for the period 2001 - 2006

PL

RELATED FIELDS OF LAW

CH – *Tamedia AG's* Takeover of *Belcom* Group Approved

Oliver Sidler,
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The *Eidgenössische Departement für Umwelt, Verkehr, Energie und Kommunikation* (Federal Department for the Environment, Transport, Energy and Communication - *UVEK*) has decided to allow *Tamedia AG* to take over Zurich local radio station *Radio 24* and local TV channel *TeleZüri*, both of which belong to radio pioneer Roger Schawinski's *Belcom* Group. The *UVEK* recognises that the takeover constitutes another step towards media concentration, a trend which it regrets. However, since many regional and national media will continue to report independently and from different viewpoints about the city of Zurich, the *UVEK* does not believe the takeover will actually harm diversity of opinion in any way. In order to prevent the co-operation between *Radio 24* and another Zurich local radio station, *Zürisee* (which has economic and operational links with *Tamedia AG*) from significantly harming the journalistic balance of the Zurich radio landscape, the *UVEK* imposed the condition that *Tamedia AG* should, within one year, sell its 26.7% capital share in *Radio Zürisee AG* and cease its journalistic co-operation with that station. In so doing, it met the demands laid down during the consultation process by the government of the Zurich canton. The approval procedure was made necessary by the transfer of *Belcom Holding AG* to *Tamedia AG*. Licensees *TeleZüri AG* and *Radio 24 AG*, among others, are part of *Belcom Holding AG*, 60% of which was owned by Roger Schawinski and 40% by *Credit Suisse First Boston* before the sale.

The *Wettbewerbskommission* (Competition Commission - *WEKO*) has also approved the takeover on condition that *Tamedia AG* sells its shareholding in *Zürisee*. The results of the *WEKO's* preliminary investigation had suggested that the merger could lead to a dominant position in the radio advertisement market in the Zurich area. However, if *Tamedia AG* were to sell its shares in *Radio Zürisee*, at least three competitors would remain in the radio advertisement market for the Zurich area. *Radio Z* and *Radio Zürisee* would be two strong rivals to *Tamedia AG*, which would be taking over *Radio 24*, among others. Advertisers would therefore have just as many alternatives available to them as before the concentration. In the *WEKO's* view, competition from other radio stations and advertising media, eg direct advertising, poster campaigns, local and regional press, would be sufficient to guarantee fair competition. ■

Press releases available at:
http://www.uvek.admin.ch/gs_uvek/de/dokumentation/medienmitteilungen/artikel/20011002/00750/index.html (DE)
http://www.uvek.admin.ch/gs_uvek/fr/dokumentation/medienmitteilungen/artikel/20011002/00752/index.html (FR)
http://www.wettbewerbskommission.ch/site/g/medien/Medienmitteilungen.Par.0025.Pic0.pdf (DE)
http://www.wettbewerbskommission.ch/site/f/medien/Medienmitteilungen.Par.0023.Pic0.pdf (FR)

DE-FR

IE – Copyright Issues in Webcast

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In July 2001 *The Irish Times* settled a copyright claim arising out of a webcast of James Joyce's novel "Ulysses". The webcast, to celebrate Bloomsday on 16 June 1998, involved a global reading of "Ulysses" over the Internet, carried on *The Irish Times*'s website, <http://www.ireland.com>. The Joyce estate argued that the webcast was a breach of copyright and instituted High Court proceedings against *The Irish Times* and the main sponsor, Irish Distillers. (Earlier this year, a major work on twentieth-century Irish literature, published by Cork University Press, had to be published without any of Joyce's works, also for copyright reasons.)

The period of copyright protection in Ireland formerly was fifty years. As a result, Joyce's work came out of copyright in 1991. However, Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, which harmonised copyright periods upwards to seventy years, extended the copyright in Joyce's work until 2011. Preparations for the webcast of "Ulysses" were made during the interim period, 1992-5, when the work was out of copyright. Also, the extracts given to well-known people to read on the webcast were taken from an edition of the book published during that interim period. However, the court proceedings were settled out of court, prior to the hearing, on the basis of a payment of costs and damages and agreement to a permanent injunction, which would prevent any future webcast. ■

For details of the Webcast Case, see "Joyce estate wins damages for Ulysses internet broadcast" by John Burns in *The Sunday Times* of 15 July 2001, available at: http://www.sunday-times.co.uk/news/pages/sti/2001/07/15/stiireire01010.html?
For details of the anthology of twentieth-century literature, see "Copyright row over Joyce excerpts" by Terence Killeen in The Irish Times of 19 February 2001, available at: http://www.ireland.com/newspaper/ireland/2001/0219/hom8.htm
Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, Official Journal No. L 290, 24/11/1993 p. 0009 – 0013, available at:
http://europa.eu.int/eur-lex/en/lif/dat/1993/en_393L0098.html

DE-EN-FR

IE – Publication of Draft Strategy for Management of Radio Spectrum

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The Office of the Director of Telecommunications Regulation (ODTR) has recently published a draft version of the strategy for the management of the radio spectrum in Ireland. The impetus for the publication of the draft strategy has been the economic impact of the use of the radio spectrum in recent years, together with the growth in demand for the radio spectrum, particularly as the information society has developed and with the general trend towards convergence. The strategy document outlines the expected use of the spectrum in the years ahead.

The draft strategy document is part of an ongoing consultation process between the ODTR and all interested parties. Spectrum users are invited to submit comments on topics raised in the strategy document by 3 December 2001.

The strategy document sets out its objectives for the management of the spectrum in general. These include the promotion and support of efficient use of the spectrum in the interests of users and the nation as a whole, while complying with international legislation and harmonising and co-ordinating with international organisations. There is also a need to support and promote innovation, research and development.

A number of strategy guidelines are also set out. These are designed to align spectrum management strategy and philosophy. They mainly concern the allocation of spectrum and licensing procedures. Again they emphasise the need for efficient use of the spectrum in the interests of users. The ODTR also points out that compliance with international standards is required in order to obtain spectrum access. The ODTR will continue to consult with the industry when making decisions.

The document also addresses the question of "administrative pricing". This is based on the principle that charges in excess of the costs of licence administration and enforcement are only justified if demand for spectrum exceeds supply either at present or in the foreseeable future. In such circumstances, the charges should be related to bandwidth, area over which the user has exclusive use (or the extent of sharing, if the use is not exclusive), and the time period over which the user has exclusive use. The Director of Telecommunications Regulation is considering the possibility of introducing administrative pricing to Ireland. It is already in use in the UK and France, as well as in Australia and New Zealand, and is being considered in a number of other countries. The Director is planning to prepare a consultation paper on this issue by Autumn 2002.

Finally, the draft document sets out specific spectrum management objectives for each type of service, such as telephony, broadcasting (including Digital Terrestrial Television in its initial stages and as it develops further), business radio, amateur radio and satellite. ■

"Strategic Management of the Radio Spectrum in Ireland: Draft Publication", Doc. No. ODTR 01/81 of 3 October 2001, available at: http://www.odtr.ie/docs/odtr0181.doc

US – Report on the Digital Millennium Copyright Act

On 29 August 2001, the Copyright Office released its report required by Section 104 of the Digital Millennium Copyright Act ("DMCA"). The DMCA is an effort by Congress to implement the World Intellectual Property Organization treaty obligations and to provide legal guidelines for how digital books, music and other materials should be lent, sold, given away or otherwise distributed to protect copyright holders. As the process of evaluating the relationship between technological change and the U.S. copyright law is an ongoing one, the DMCA under Section 104 directed the Register of Copyrights and the Department of Commerce to submit a report to Congress after a two-year period. The mandate was to evaluate the impact of the DMCA, electronic commerce, and associated technologies on Section 109 and 117 of the Copyright Act, Title 17 of the United States Code. Section 109 deals with limitations on exclusive rights and the effect of transfer of a particular copy or phonorecord – also known as the "First Sale Doctrine" - and Section 117 governs limitations on exclusive rights of computer programs and exceptions to the circumvention prohibitions.

During this period, the public was invited to submit comments, and public hearings on the matter were held last autumn. Interested commenters included individuals, academia, libraries, copyright organizations, and

Copyright owners. This input formed the core information considered by the Copyright Office in its evaluation and recommendations.

The majority of comments dealt with Section 109, with most commenters believing that the anticircumvention provisions of 17 U.S.C. Section 1201 allowed copyright owners to restrict the operation of section 109. Despite arguments put forth that content scrambling systems and "region coding" worked to interfere with their free alienability on the market, the Copyright Office was unconvinced, stating that Section 109 does not guarantee the existence of secondary markets for works and there are many factors which could affect the resale market.

The Study did not recommend a dramatic overhaul of the DMCA particularly in the context of the Act's effects on the operation of sections 109 and 117 since it found no convincing evidence of present day problems. But the report does call for new legislation to clarify the rights of users in certain narrow circumstances. The Copyright Office recommends the law be amended to allow users to make backup copies of software they purchase, as well as to make archives of material maintained in their computers. It also asks Congress to clarify that temporary copies of files made in the course of streaming or broadcasting videos or music on the World Wide Web should not be subject to additional royalties and should be exempt from potential infringement liability. ■

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Study Required by Section 104 of the Digital Millennium Copyright Act, available at: http://www.loc.gov/copyright/reports/studies/dmca/dmca_study.html

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*Degenhart, Christoph.-*Der Funktionsauftrag des öffentlich-rechtlichen Rundfunks in der "Digitalen Welt".*-Heidelberg: Recht und Wirtschaft, 2001.-122 S.- (*Schriftenreihe Kommunik. und Recht, *Bd. 13).- ISBN 3-8005-1288-2 .-EUR 23*

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*Von Olenhusen, Albrecht Götz.-*Film und Fernsehen: Arbeitsrecht; Tarifrecht*;* Vertragsrecht: Deutschland, Österreich, Schweiz : Kommentar und Handbuch mit Vertragsmustern.*-Baden-Baden: Nomos, 2001.-964 S.-ISBN.- 3-7890-7586-8.-DEM 298*

AGENDA

Maîtriser les risques juridiques liés à l'édition de contenu en ligne
11 December 2001
Organiser: Les Rencontres d'Affaires
Venue: Paris
Information & Registration:
Tel.: +33 (0) 146 29 69 13
Fax: +33 (0) 146 29 68 29
E-mail: weber@lra.fr
http://www.lra.fr

Wichtige marken- und wettbewerbsrechtliche Fragen des Internet
14 December 2001
Organiser: Verlag C.H. Beck - Seminare
Venue: Munich
Information & Registration:
Tel.: +49 (0) 3 81 89-473
Fax: +49 (0) 3 81 89-547
E-mail: seminare@beck.de
http://www.beck-seminare.de

Rechtsfragen des Internet
7 December 2001
Organiser: Verlag C.H. Beck - Seminare
Venue: Berlin
Information & Registration:
Tel.: +49 (0) 3 81 89-473
Fax: +49 (0) 3 81 89-547
E-mail: seminare@beck.de
http://www.beck-seminare.de

Vertragsgestaltung im Online-Recht
8 December 2001
Organiser: Verlag C.H. Beck - Seminare
Venue: Berlin
Information & Registration:
Tel.: +49 (0) 3 81 89-473
Fax: +49 (0) 3 81 89-547
E-mail: seminare@beck.de
http://www.beck-seminare.de