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European Court of Human Rights: Case of E.K. v. Turkey

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In 1994, E.K., the secretary of the Istanbul section of the Human Rights Association, was convicted in two separate judgments by the State Security Court, which found that she had expressed support for the activities of the PKK and that she had undermined the territorial integrity and unity of the Turkish Nation. The first conviction related to an article by E.K., published in the Istanbul daily newspaper, *Özgür Gündem*, and entitled, "The world owes a debt to the Kurdish people". The article contained the text of a lecture by E.K. at a conference held in the Belgian Parliament. The article criticised the repressive approach of Turkish policy in Kurdistan and the violation of human rights by the Turkish army. The second case concerned an article in a book that was edited by E.K. The article described the situation in Turkish prisons. The State Security Court sentenced E.K. to terms of two years' and of six months' imprisonment and imposed substantial fines on her, pursuant to the Anti-terrorism Act.

The applicant complained that her conviction in relation to the publication of the book constituted a violation of Article 7 (no punishment without law) and that both convictions infringed Article 10 (freedom of expression) and Article 6 (fair trial) of the European Convention on Human Rights and Fundamental Freedoms.

The Court unanimously declared the conviction in relation to the publication of the book to be an infringement of Article 7 of the Convention, as according to Turkish law, prison sentences could only be imposed on the editors of periodicals, newspapers and magazines - and not books. The Court also unanimously declared that both convictions were in breach of Article 10 of the Convention. The conviction in relation to the publication of the book applied a law which was no longer applicable at the time of the conviction by the State Security Court. Hence this interference by the Turkish public authorities was considered not to be prescribed by law. In more general and principled terms, the Court also found a breach of Article 10, as the Court emphasised once more the importance of freedom of expression, the role of the press in a genuine democracy and the right of the public to be properly informed. According to the Court, the impugned article published in *Özgür Gündem* did indeed sharply criticise the Turkish authorities, but it did not contain any incitement to violence, hostility or hatred between citizens. Nor was the conviction of the applicant as editor of the book to be considered "necessary in a democratic society". The Court emphasised that the impugned article was rather to be seen as a strong protest referring to a difficult political situation, and not as incitement to an armed struggle. Finally, with regard to the alleged violation of Article 6, the Strasbourg Court attached great importance to the fact that a civilian (lawyer, editor and human rights activist) had to appear before a court composed, even if only in part, of members of the armed forces. Hence the applicant could legitimately fear that because one of the judges of the State Security Court was a military judge, it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, E.K. had a legitimate cause and there were objective reasons to doubt the independence and impartiality of the State Security Court, which led to the finding of a violation of Article 6 of the Convention. ■

Judgment by the European Court of Human Rights (Third Section), Case of E.K. v. Turkey, Application no. 28496/95 of 7 February 2002, available at:
http://www.echr.coe.int

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Entry into Force of Protocol Amending European Convention on Transfrontier Television

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On 5 February, the French authorities deposited their instrument of acceptance regarding the Protocol Amending the European Convention on Transfrontier Television with the Secretary General of the Council of Europe. This paved the way for the Protocol, which was originally opened for signature on 1 October 1998, to finally enter into force on 1 March. To date, the Protocol has been ratified by 23 Member States of the Council of Europe and the Holy See (which has Observer Status with the Committee of Ministers of the Council of Europe). The Convention, as amended by the Protocol, now applies in each of these States.

The principal effect of the entry into force of the Amending Protocol will be to align the Convention more closely with the EU "Television without Frontiers" Directive. The original Convention's provisions on, *inter alia*, jurisdiction, access of the public to events of major importance, and advertising and tele-shopping, have all been extensively revised by the Protocol. ■

"Entry into force of revised TV Convention: French authorities accept the amending Protocol", Announcement of 13 February 2002, available at:
http://www.humanrights.coe.int/media/
Protocol Amending the European Convention on Transfrontier Television, 1 October 1998, ETS No. 171 & Explanatory Report, available at:
http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=171&CM=8&DF=04/03/02
EN-FR

Parliamentary Assembly: Preliminary Draft of First Protocol to Cybercrime Convention

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A preliminary draft of the First Additional Protocol to the Convention on Cybercrime on the criminalisation of acts of a racist or xenophobic nature committed through computer systems, was made public in February. This is a significant milestone in a process that can be traced to the drafting of the Convention itself (see IRIS 2001-5: 3, IRIS 2001-7: 2, IRIS 2001-9: 4, IRIS 2001-10: 3 and IRIS 2002-1: 3).

The definitional section of the proposed Protocol sets out "racist or xenophobic material" as: "any written material, any image or any other representation of thoughts or theories, which advocates, promotes, incites (or is likely to incite) acts of violence, hatred or discrimination against any individual or group of individuals, based on colour, religion, descent, nationality, national or ethnic origin" (Article 2).

A major pillar of the draft text is devoted to measures to be taken at the national level. Among those envisaged is an obligation on each contracting State to "adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right", the making available or distribution of racist or xenophobic material (to the public) through a computer system, or the production of material for such purposes (Article 3). A similar obligation would rest on States to criminalise the acts of (i) threatening individuals or groups with the commission of a serious criminal offence through a computer system on account of distinctive characteristics of that individual or group, such as race or colour; and (ii) "directing, (supporting) or participating in activities (with the intent of/for the purpose of facilitating) a racist or xenophobic group to commit the offences" defined in the proposed Protocol (Article 4). Attempt and aiding and abetting in the commission of such offences should also be criminalised at the national level, according to Article 5. The preambular section of the proposed Protocol is still under preparation, as is a provision on "denial or justification of racist or xenophobic crimes".

The drafting process is being coordinated by the European Committee on Crime Problems (CDPC) and the Committee of Experts on the criminalisation of acts of a racist or xenophobic nature committed through computer systems (PC-RX). ■

First Additional Protocol to the Convention on Cybercrime on the criminalisation of acts of a racist or xenophobic nature committed through computer systems, Draft No. 3 (Public Version), 14 February 2002, available at:
http://www.legal.coe.int/economiccrime/cybercrime/AvProjetProt2002E.pdf
Background Information on the Cybercrime Convention, available at:
http://www.legal.coe.int/economiccrime/Default.asp?fd=cybercrime&fn=IndexE.htm
EN-FR

EUROPEAN UNION

Court of Justice of the European Communities: Decision on the Regulation of Conditional Access Services for Digital Television

On 22 January 2002, the European Court of Justice (ECJ), in a preliminary ruling, answered the questions raised by the Spanish *Tribunal Supremo* (Supreme Court) on the interpretation of some provisions of European Law relating to the regulation of conditional access services for digital television. Those questions were raised in administrative law proceedings brought by the Spanish digital platform *Canal Satélite Digital* (CSD) before the Supreme Court for a declaration that some sections of the Spanish Decree 136/1997 (which deals with conditional access services for digital television, CAS) were void.

According to CSD, the Spanish Decree 136/1997 unduly obliged CAS operators to register details of themselves and of their equipment, decoders and systems in a compulsory official register, with such registration being conditional on a prior technical report from the national authorities on compliance with certain requirements laid down in the national legislation. CSD considered that this provision restricted the free movement of goods.

Moreover, CSD claimed that the Spanish legislation (namely, the Single Additional Provision of Decree-Law 1/1997, on the incorporation into Spanish Law of Directive 95/47/EC on the use of standards for the transmission of television signals) unduly restricted its freedom to provide CAS services, as that provision stated that CAS operators were entitled to market their equipment, decoders and systems only after successfully completing the registration procedure.

The Spanish Government challenged CSD's interpretation of the legislation concerned, as it considered that there was no violation of EC law, and that the entry in the register did not constitute a precondition for marketing decoders or carrying on the business of the CAS operator, since that registration did not create, or alter,

rights and was simply intended to establish, for the information of third parties, that the operators were complying with European legislation.

The Spanish Supreme Court had doubts as to the correct interpretation of the relevant Community Law, and it decided to refer some questions to the ECJ for a preliminary ruling.

The ECJ, in answering those questions, ruled that national legislation which makes the marketing of equipment, decoders or digital transmission and reception systems for television signals and the provision of related services by CAS operators subject to a prior authorisation procedure restricts both the free movement of goods and the freedom to provide services. These legislative restrictions might be justified if they pursue a public interest objective recognised by Community law and comply with the principle of proportionality.

In determining whether national legislation complies with the principle of proportionality, a national court has to take into account, *inter alia*, that a prior administrative authorisation scheme has to be based on objective, non-discriminatory criteria which are known in advance, and it shall not essentially duplicate controls which have already been carried out in the context of other procedures, either in the same State or in another Member State. Moreover, a prior authorisation procedure will only be necessary where subsequent control must be regarded as being too late to be effective. Such a procedure shall not, on account of its duration or the costs to which it gives rise, deter the operators concerned from pursuing their business plan.

Now, the Spanish Supreme Court, in accordance with the principles laid down by the ECJ in its judgment, will rule on whether some provisions of the Spanish Decree 136/1997 shall be declared void. It is necessary to bear in mind that these provisions only govern the structure and operation of the register. The requirement to register (and the sanctions in case of breach of this obligation) were established by the Additional Provision of Decree-Law 1/1997, which can only be declared void by the Constitutional Court and which, in any case, was completely amended by Act 17/1997 and Decree-Law 16/1997. ■

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

Case C-390/99, *Canal Satélite Digital SL v. Administración General del Estado*, Judgment of the European Court of Justice of 22 January 2002, available at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61999J0390

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

Council of the European Union: Telecoms Package Adopted

On 14 February 2002, the Council of the European Union approved the new Telecoms Package (see IRIS 2002-1: 5). This legislative package harmonises telecommunications and media legislation across the EU. Member States have 15 months to implement the package into their national laws. The Information Society Commissioner Erkki Liikanen stated that the package completes the internal market for the information society – delivering a better deal for consumers in terms of price, quality and value for money – and that it also provides greater transparency and legal certainty for all market players.

The Telecoms Package consists of the following elements: a Framework Directive, an Authorisation Directive, an Access Directive (see article *infra*), a Universal Service Directive and a Decision on a regulatory framework for radio spectrum policy.

The package is technology-neutral, which means that all transmission networks are treated in an equivalent manner. It ensures that market players are regulated only where necessary and in a consistent manner across the EU. For instance, the Commission will be able to require a national regulatory authority (NRA) to withdraw a draft measure where it concerns the definition of relevant markets or the designation (or not) of undertakings with significant market power, and where such decisions would create a barrier to the functioning of the internal market.

The Commission announced that it would in the near future issue the following measures linked to the implementation of the new regulatory framework:

- Guidelines on market definition and the assessment of significant market power, to assist NRAs in applying the new regulations;
- a Recommendation on Relevant Product and Service Markets within the electronic communications sector, identifying the market segments where sector-specific regulation may be appropriate;
- a Decision establishing a "European Regulators Group", composed of national regulators and the Commission, which will foster cooperation to ensure consistency in regulatory decision-making across the EU; and
- a Decision establishing a "Radio Spectrum Policy Group", composed of national and Commission representatives, to assist and advise on coordinating radio spectrum policy and efficient use of the spectrum.

A definitive text for the Data Protection Directive has not yet been agreed upon (see article *infra*). ■

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"Telecoms package will bring better deal for consumers", Press Release IP/02/259 of 14 February 2002, available at:
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/259|0|RAPID&lg=EN&display=

DE-EN-FR

Directive of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), PE-CONS 3670/01, adopted on 4 February 2002, available at:
http://register.consilium.eu.int/pdf/en/01/st03/03670en1.pdf
Directive of the European Parliament and of the Council on the authorisation of electronic communications networks and services (Authorisation Directive), PE-CONS 3671/01, adopted on 4 February 2002, available at:
http://register.consilium.eu.int/pdf/en/01/st03/03671en1.pdf
Directive of the European Parliament and of the Council of ..... on a common regulatory framework for electronic communications networks and services (Framework Directive), PE-CONS 3672/01, adopted on 4 February 2002, available at:
http://register.consilium.eu.int/pdf/en/01/st03/03672en1.pdf
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), PE-CONS 3673/01, adopted on 4 February 2002, available at:
http://register.consilium.eu.int/pdf/en/01/st03/03673en1.pdf

EN

Council of the European Union: Access Directive Adopted

The newly-adopted European Access Directive is part of the Telecoms Package that was accepted on 4 February by the Council (see IRIS 2002-1: 5 and *supra*). The new Directive replaces, inter alia, the former Open Network Provisions (ONP) access rules and will shape the future European policy as regards access regulation. The new approach initially carries the former access and interconnection obligations forward into the new framework, but makes them subject to permanent review in the

light of prevailing market conditions. This is to progressively relax former obligations and impose new obligations according to the new telecoms framework.

Unlike the former ONP framework, the Access Directive covers access to and interconnection of all electronic communications networks and associated facilities that are used for the commercial provision of publicly-available electronic communications services or for the transmission of broadcasting signals. In other words, open access regulation is no longer restricted to selected elements of the telecommunications network. Instead, a more general approach has been adopted. The Directive now applies to all forms of communications networks carrying publicly-available communications services, whether used for voice, fax, data or images, including fixed and mobile telecommunications networks, cable TV networks, networks used for terrestrial broadcasting, satellite networks and networks using Internet protocol (IP). The Access Directive harmonises the way in which Member States generally regulate access to, and interconnection of, electronic communications networks and associated facilities.

Another substantial change from the former ONP concept is the new, flexible approach towards access regulation. Instead of pre-defined access obligations, it is now left to National Regulatory Authorities (NRAs) to determine in what circumstances facilities are considered to be potential bottlenecks to market entry and competition. Initiatives of the NRAs are restricted to "situations where the national regulatory authority considers that denial of access would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest."

Once NRAs have identified a possible bottleneck and a provider of communications networks or facilities is designated as a party with significant market power (according to the market procedure laid down in Articles 13 and 14 of the Framework Directive), NRAs can choose the initiative which is most likely to restore market balance from a list of possible options. This list of possible options ranges from duties of access and interconnection to initiatives that improve transparency in the communications sector.

One specific article of the Access Directive - Article 6 - is dedicated to the regulation of access to Conditional Access devices and services (CA), thereby including the regulation of CA in the communications framework and replacing the provisions of Directive 95/47/EC on digital television standards (which is revoked by the Access Directive). The final version of the Access Directive is less innovative than former proposals of the European Parliament (eg, to introduce a reference to interactive service platforms and a standardised Application Programme Interface (API), as well as to extend the access obligation to Electronic Programme Guides (EPGs) and APIs and to give national regulatory authorities the power to also adopt ex-ante access obligations for future bottlenecks such as return paths and decoder storage possibilities). Instead, Article 6 and Annex 1 of the Access Directive repeat rather literally the principles of the former Directive 95/47/EC, i.e., an absolute obligation for all providers of CA services to grant digital broadcasters access on fair, reasonable and non-discriminatory terms; provisions on transcontrol and conditions for licensing manufacturers of consumer equipment. Article 6 of the Access Directive, however, stipulates that in certain circumstances, NRAs can withdraw the access obligation with respect to operators without significant market power. The Directive also includes an opening clause and lays down the procedure under which the access obligation can be extended to EPGs and APIs, where this is necessary to ensure accessibility of digital radio and television broadcasting to end-users. ■

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Directive of the European Parliament and of the Council on access to, and interconnection of, electronic communication networks and associated facilities (the Access Directive), PE-CONS 3670/01, adopted on 4 February 2002 (to be published in the Official Journal), available at:
http://register.consilium.eu.int/pdf/en/01/st03/03670en1.pdf
EN

Council of the European Union: Amended Data Protection Draft Adopted

On 28 January 2002, the Council of the European Union adopted a common position regarding the draft Directive concerning the processing of personal data and the protection of privacy in the electronic communications sector. The common position was already agreed on by the EU Telecoms Ministers on 6 December 2001 (see IRIS 2002-1: 5). Since the adopted proposal differs on various points from the one agreed on by the European Parliament, it was transferred to the Parliament for a second reading on 6 February 2002.

Compared to the position adopted by the European Parliament, the Council takes a more moderate approach towards information-gathering. Member States shall ensure that the user is clearly informed about the use of cookies and is offered the right to refuse processing ("opt-out"). With respect to unwanted commercial e-mail, the Council proposes an opt-in solution, whereas unsolicited e-mail concealing the identity of the sender is explicitly prohibited. Other unsolicited direct marketing communication may be regulated on an opt-in or opt-out basis. ■

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Council of the European Union, Interinstitutional file 2000/0189 (COD), 29 January 2002, available at: http://register.consilium.eu.int/pdf/en/01/st15/15396-r2en1.pdf
For the legislative history of the draft Directive, see:
http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=158278
EN

European Commission: Infringement Proceedings against Belgium and Denmark

The European Commission has decided to continue infringement proceedings against Belgium and Denmark for not implementing Directive 92/100/EEC by sending a reasoned opinion to both countries. The Directive, which entered into force on 1 July 1994, provides *inter alia* for a community framework with regard to rental and lending rights. The sending of a reasoned opinion is the second stage of infringement proceedings on the basis of Article 226 of the EC Treaty. If a Member State does not file a satisfactory reply within two months of the request, the Commission may bring the matter before the European Court of Justice.

The Commission sent a reasoned opinion to Belgium regarding the non-implementation of public lending provisions. According to Article 1 of the Directive, Member States shall provide "a right to authorize or prohibit the rental and lending of originals and copies of copyright works". Member States may derogate from the exclusive

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right provided for in Article 1 in respect of public lending, provided, at least, that authors obtain remuneration for such lending. Belgium did not implement one of these options, thereby denying neighbouring rights owners remuneration for public lending and rental.

A reasoned opinion was sent to Denmark concerning the so-called "distribution right". This is an exclusive right of performers, phonogram producers, film producers and broadcasting organisations to make their protected works available to the public by sale or otherwise. It is exhausted after the first sale in the European Community. The Danish statutes only protect the distribution right of objects which are produced in the European Economic Area (EEA), thereby denying rights owners from outside the EEA equal protection. This harms the internal market, since rights owners can exercise their distribution right for non-EEA products which are imported via Denmark to another Member State. ■

Press Release IP/02/191 of 4 February 2002, "Copyright: Commission pursues infringement proceedings against Belgium and Denmark", available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/191|0|RAPID&lg=EN&display=

DA-DE-EN-FR-NL

European Commission: Proposal for Software Patents

On 20 February 2002, the European Commission agreed on a Proposal for a directive on the patentability of computer-implemented inventions (COM(2002) 92 final). The proposed directive aims to harmonise national patent laws with respect to the patentability of computer-implemented inventions by making the condition of patentability more transparent. The proposal will now be submitted to the Council of Ministers and the European Parliament in a codecision procedure where it will be the subject of discussion.

The proposal was agreed on after a lengthy consultation process involving all interested parties, which started in 1997. Opinions on the matter were sharply divided, with one side preferring strict limits on software patents and the other side seeking to maintain the *status quo* of European Patent Office (EPO) jurisprudence on this subject.

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The Commission chose the latter, offering three reasons for the necessity of a directive in its Explanatory Memorandum. The advanced state of the art in software makes innovation in this field very expensive, whereas software is easy to copy. Nevertheless, the current state of protection of software-related inventions is ambiguous and lacks legal certainty. This is due to a divergence in the application of the patentability criterion for software by the Member States' courts and the EPO. Although national law is supposed to be uniform and consistent with the European Patent Convention of 1977, its application by national courts varies with respect to software.

The proposed directive codifies the already existing protection criterion of the EPO. Member States shall ensure that for an invention to be accorded protection it must be a technical contribution, as per Article 4(2) of the proposed directive. In order to be a technical contribution, the invention has to contribute to the state of the art in a technical field which is not obvious to a person skilled in the art (Article 2(b)). Protection can be given to both a product and a process in accordance with article 27(1) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), as per Article 5 of the proposal. The proposed directive does not affect the protection already afforded under Directive 91/250/EEC on the legal protection of computer programs by copyright (Article 6). It furthermore does not extend to "isolated programs", i.e. programs which are isolated from a machine on which they may be run. The proposed directive provides for a three-year period, after which the effects of the (proposed) Directive will be assessed by the Commission and reported on to the European Parliament and the Council. ■

Proposal for a directive of the European Parliament and the Council on the patentability of computer-implemented inventions, COM(2002) 92 final of 20 February 2002, available at: http://europa.eu.int/comm/internal_market/en/indprop/02-277.htm

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

NATIONAL

BROADCASTING

AL – Conflict of Interests among Private Television Stations Aggravated

The National Council of Radio and Television has fined five local private television stations up to EUR 13,000. Koha TV, Telenorba Shqiptare, Vision Plus, Shijak TV and Top Channel are the latest to have penalties imposed on them by the State Authority for Licensing and Monitoring in Albania.

The official reason for these penalties is the "violation of the rules for fair competition" and "arbitrary expansion of the licensing area". In other words: these private television channels, which have been granted a license for local television transmission, that is covering only a limited area with their television signal, have expanded their area of coverage beyond the area provided for in the license.

Under the Law No. 8410, dated 30 September 1998, "On private public radio and television in the Republic of Albania", private radio and television channels are divided in two categories: "national", covering the whole area of Albania, and "local", covering a limited area according to the license granted by the State Licensing Authority. So far, the Parliament of the Republic of Albania has passed a law granting a license to only two national private television channels, whereas there is no limit to the number of local television channels.

The legislators justify the restriction to two national private television channels on the grounds that the private television channels do not have the actual capacity to cover the whole area of the Republic of Albania. According to Law No. 8410 dated 30 September 1998, national private television, from the moment of being granted a license, should cover over 70% of the territory with its signal. Actually, no licensed national television channel, either private or public, meets this requirement. The limited financial and technical capacities of the television stations render it impossible.

On the other hand, the allocation of licenses to so many national private television stations harms the interests of local television stations in various regions in Albania. The

national television channels with their headquarters in Tirana harm the technical quality of the local channel transmissions in the suburbs, due to frequency interference, as well as in the advertisement market.

"The Forum of Free Media", an independent association of Albanian journalists dedicated to the protection of the rights of the private electronic media, objects to the legal requirement, and is seeking total freedom of the electronic media in regard to transmission coverage. According to the association, there is no convincing argument in favour of limiting the number of national licenses, and free competition will decide which television will be national and which local. Although not in accordance with the law that allows only two national private television channels, many private television channels, on having been granted a license for local transmission, are in practice expanding their area covered by their signal in violation of the law. This has obliged the National Council of Radio and Television to undertake the latest sanctions against the above-mentioned television stations. ■

Hamdi Jupe
Albanian Parliament

Law no. 8410 dated 30 September 1998, "On private radio and television in the Republic of Albania"

SQ

BE – VT4 Finally Established in the Flemish Community

By its decision of 15 February 2002, the *Vlaams Commissariaat voor de Media* (Flemish Media Authority) has decided to recognise the SBS-broadcasting station VT4 as a Flemish broadcasting organisation. From 1 March 2002, VT4 will operate under the Flemish Broadcasting Act 1995. VT4's licence from the Independent Television Commission (ITC) in the United Kingdom also ceased to be valid on 1 March 2002.

Until recently, VT4, as a British broadcaster with its programmes targeting the Flemish Community, was operating with an ITC licence in accordance with the UK Broadcasting Act. Since February 1995, the programmes of VT4 have been retransmitted by the Flemish cable networks in compliance with EU law and Directive 89/552/EEC of 3 October 1989 guaranteeing the freedom of reception and retransmission of television broadcasts from other Member States. The attempt in 1995 by the Flemish Government to prevent the distribution of VT4 failed after judgments by the *Raad van State/Conseil d'État* (State Council) and the Court of Justice recognising the principles of Directive 89/552/EEC. Under pressure from a decision by the European Commission of 26 June 1997, the Flemish Parliament also abrogated in 1998 the exclusive character of the licence of the only Flemish commercial broadcasting organisation (VMM/VTM). As a result, since 1998 other private broadcasting organisations have also become eligible to obtain a licence issued by the Flemish Media Authority. In the same period, both the Flemish Parliament and the Flemish Media Authority developed the argument that VT4 was in reality to be considered a broadcasting organisation established in the Flemish Community and that VT4 with its British ITC licence was circumventing Flemish broadcasting regulations. VT4 was ordered to seek a Flemish broadcasting licence. Again, however, the State Council and the European Commission overruled this approach and emphasised that the Flemish authorities had no jurisdiction over a broadcaster established in another EU Member State.

It now seems that VT4 has voluntarily opted to change its place of establishment and to organise its head office and editorial decisions within the Flemish Community. The licence SBS5, obtained by virtue of a decision of 19 January 2001, has recently been altered by a new decision of the Flemish Media Authority, changing the SBS5-licence into a licence for VT4 Limited. As a consequence, VT4 now has to operate according to the provisions of the Flemish Broadcasting Act. This means, *inter alia*, that VT4 has to fulfil the obligation to broadcast at least two news programmes a day and that it may no longer broadcast TV-commercials in a period of five minutes before or after children's programmes. ■

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Decision of the *Vlaams Commissariaat voor de Media* (Flemish Media Authority) of 15 February 2002 (nr. 2002/15), licensing VT4 for a period of nine years as a Flemish broadcasting organisation under article 41, 1° of the Broadcasting Act 1995

NL

DE – TV Pornography Ban Explained

In a ruling of 20 February, the *Bundesverwaltungsgericht* (Federal Administrative Court - *BVerwG*) offered an explanation of the ban on the TV broadcasting of pornography set out in para. 3 of the original *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting - *RStV a.F.*).

The aforementioned paragraph states that TV programmes are unlawful "if they are pornographic (see Penal Code Section 184)". This reference to the *Strafgesetzbuch* (Penal Code - *StGB*) formed the background of a legal dispute between a private broadcaster who had shown a series of films on pay-TV and the relevant supervisory authority, which had considered the films to be pornographic and therefore unlawful. The court of first instance, the *Verwaltungsgericht Hamburg* (Hamburg Administrative Court - *VG*), had upheld the authority's complaint (see IRIS 2001-4: 5).

The *BVerwG* explained that the admissibility of the broadcasts depended largely on whether they had breached an objective provision of the ban on pornography, which in principle should be judged from a criminal law point of view. In this context, material was considered pornographic if, regardless of other human references, sexual activity was portrayed in a particularly overpowering or attention-grabbing manner, either exclusively or predominantly for the purposes of sexual arousal. However, other criteria also had to be met if the broadcasts were to be deemed illegal. In particular, it was important to ascertain whether the broadcasts had been accessible to children or young people.

Access to the programmes, broadcast in 1997, was only restricted via the basic encryption system used by the pay-TV provider. No additional devices were used to block the analogue signals. One question to be considered, therefore, is whether the use of further conditional access systems would have provided sufficient protection for young people. These might have included a numerical code needed to access programmes which were only available on payment of an additional one-off subscription for each individual film (Pay-per-view).

Since such a judgment could not be made on the basis of the findings of the court of first instance, the dispute had to be referred back to the *VG*. ■

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***Bundesverwaltungsgericht, Urteil vom 20. Februar 2002, Az.: 6 C 13.01.* (Federal Administrative Court), ruling of 20 February 2002, case no. 6 C 13.01.**

DE

DE – *Bundesrat* Accepts Need for TV Directive Revision

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A resolution adopted on 1 March 2002 by the *Bundesrat* (upper house of parliament), which represents the *Bundesländer* at federal level, mentions various issues that should be taken into account during the forthcoming revision of the "Television Without Frontiers" Directive.

First of all, the *Bundesrat* suggests that the Directive should stipulate that its provisions may be transposed in conformity with Community law by means of self-regulatory mechanisms.

With regard to Article 3a, various adjustments are proposed in response to past experiences with the practical enforcement of Member States' lists of events of major importance for society. The *Bundesrat* calls for mutual recognition of the events included in the various national lists, a definition of what constitutes "a substantial proportion of the public", to whom coverage must be available on free-to-air television, and an explanation of the form such coverage should take. It also believes that the Directive should stipulate that the European Commission should issue formal decisions after verifying the compatibility with EC law of national measures notified by a Member State. This should remove the confusion about whether such decisions may be disputed.

The *Bundesrat* also suggests that the importance of the principles of unhindered access to information and the free flow of information in the internal market should be clearly emphasised. The proposal that broadcasters should be entitled to present short reports free of charge corresponds with the first of these principles. This could benefit all European-based TV broadcasters wishing, for their own broadcasting purposes, to report on events that are open to the public and of particular interest.

The *Bundesrat* also suggests that programme quotas should be abolished. As advertising is deregulated, it is particularly important to adhere to qualitative rules. ■

Entschließung des Bundesrates vom 1. März 2002 zur Revision der Richtlinie 89/552/EWG des Rates vom 3. Oktober 1989 in der Fassung der Änderungsrichtlinie 97/36/EG zur Koordinierung bestimmter Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über die Ausübung der Fernsehtätigkeit (Bundesrats-Drucksache BR-Drs. 116/02 (Beschluss)
(*Bundesrat* Resolution of 1 March 2002 on the revision of Directive 97/36/EC amending Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (doc. BR-Drs. 116/02))

DE

ES – New Legal Definition of Role of Public Service Broadcaster RTVE

Alberto Pérez Gómez
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In Spain, the national public service broadcaster is the *Ente Público Radio Televisión Española* (RTVE). The formal entrustment of its public service mission was made by means of Act 4/1980 on the Statute of Radio and Television. However, this Act did not provide a clear definition of the public service remit of RTVE.

Now, the Spanish Parliament has amended the Statute of Radio and Television, with the aim of defining the extent of the public service. According to the new version of article 5 of the Statute of Radio and Television:

- RTVE shall produce and broadcast several radio and television programmes for all sections of the population, including programmes catering for special interests. It shall also guarantee access by all citizens to quality information, culture, education and entertainment. RTVE, balancing social profitability and economic efficiency, shall promote constitutional values, the respect of human dignity and cultural diversity.
- RTVE shall comply with this public service remit both in its national and regional services.
- RTVE shall offer programmes intended to be broadcast abroad, with the aim of promoting Spanish culture and catering for Spaniards staying or living in foreign countries.
- RTVE shall actively promote the development of the Information Society. For this purpose, it shall use new production and broadcasting technologies, and it shall offer digital and on-line services.

Parliament has also amended other articles of the Statute of Radio and Television, namely article 26 (on the control, by a Parliamentary Commission, of the fulfilment of the public service remit of RTVE) and article 3 (on the application of the principles set out by the Statute of Radio and Television to the regional public service broadcasters).

These amendments have been adopted within the context of the investigation on the funding of Spanish public broadcasters which is being carried out by the European Commission, following the complaints of Spanish private broadcasters. In October 2001, the European Commission adopted a Communication explaining how State aid rules apply to funding of public service broadcasters (see IRIS 2001-10: 4). According to the European Commission, Member States have to establish a clear and precise definition of public service in broadcasting, and public funding shall be limited to what is necessary for the fulfilment of that mission (proportionality). The Spanish Parliament, by means of this amendment of the Statute of Radio and Television, has tried to define the public service remit of RTVE in a clearer way. In the meantime, the Spanish Government is trying to set out a new financial framework for RTVE.

These new provisions amending the Statute of Radio and Television were included in the Special Measures Act, which is approved each year, together with the Budget Act. The aim of the Special Measures Act is to introduce amendments in existing provisions, thus acting as a "container" of amendments. This kind of Act has been severely criticised because of its heterogeneity and because of the insufficient debate that precedes its approval. ■

Disposición Adicional Decimosexta de la Ley 24/2001, de 27 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social, Boletín Oficial del Estado n. 313, de 31.12.2001, pp. 50611-50612
(Sixteenth Additional Provision of Act 24/2001 on Taxation, Administrative Provisions and Social Affairs)
http://www.igsap.map.es/cia/dispo/l24-01.htm

ES

FR – Publication of the Final Decree Reforming the Regulations of the Audiovisual Sector

The final decree reforming the regulations of the audiovisual sector was published in the Official Journal on 6 February (for the previous decrees, see IRIS 2002-2: 8). The decree lays down the scheme applicable to cable and satellite channels and sets out all the corresponding provisions applicable to them, in particular the broadcasting of advertising, their contribution to the development of production and the scheme for broadcasting audiovisual works (original French-language works, works not shown previously, independent production, etc). It states in particular that "the maximum time

devoted to the broadcasting of advertising" may not "exceed twelve minutes in any one hour". Article 7 of the decree provides that "service editors must devote each year at least 3.2% of their net turnover for the previous financial year to expenditure contributing to the development of the production of European cinematographic works". The level of this obligation to contribute to the development of the production of original French-language works should "represent at least 2.5% of the net turnover of the previous financial year". According to Article 11, "those service editors which reserve more than 20% of their broadcasting time each year for audiovisual works must devote each year more than 16% of their turnover for the previous financial year to expenditure contributing to the development of the production of European audiovisual works or original French-language works". However, "this rate is reduced to 8% for service editors devoting more than half their broadcasting time to video-taped music".

From 1 January 2003, the cable and satellite channels will have to sign an agreement with the CSA covering a period that may not exceed ten years, defining, in line with statutory rules and regulations, the specific obligations imposed on the particular service and the CSA's arsenal of contractual prerogatives and penalties to ensure respect for the contractual obligations. Cable channels have always been subject to this obligation to sign an agreement under Article 34-1 of the amended Act of 30 September 1986. Satellite channels have only been required to do so since the Decree of 9 July 2001, which amended the Decree of 1 September 1992. The final Decree of 4 February has now brought together all the provisions applicable to cable and satellite channels in a single text.

Now that all the decrees reforming audiovisual legislation and the obligations of the future terrestrially-broadcast digital television channels have been published, the CSA has said that the deadline for submitting applications for these future channels will be 5 pm on 22 March 2002. The list of admissible candidates will be published in April and the list of successful candidates in July. The agreements will therefore be signed and the authorisations issued in November 2002.

On 5 February the *Association pour le numérique terrestre* (association for terrestrial digital broadcasting), whose members are the chairmen of the groups AB, Bolloré, France Télévision, Lagardère Média, Netgem, NRJ and Pathé, announced the signing of a charter in favour of terrestrial digital broadcasting. Its signatories would like to see the development of both a free-of-charge offer that was "broad and of good quality, attractive to the widest possible public" and an offer for which a charge was made that was "strong, aimed at substantial market penetration by means of a dynamic commercial policy". They stress the need to guarantee equitable conditions for distribution and broadcasting for all programme editors, and support the principle of fiscal measures to help households acquire the necessary equipment. They undertake to take part in all the "professional studies, experiments and discussions in preparation for the launch of terrestrially-broadcast digital television". ■

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Décret n° 2002-140 du 4 février 2002 pris pour l'application des articles 33, 33-1, 33-2 et 71 de la loi n° 86-1067 du 30 septembre 1986 et fixant le régime applicable aux différentes catégories de services de radiodiffusion sonore et de télévision distribués par câble ou diffusés par satellite – JO, 06/02/02 **(Decree no. 2002-140 of 4 February 2002 for the purpose of application of Articles 33, 33-1, 33-2 and 71 of Act no. 86-1067 of 30 September 1986 and laying down the scheme applicable to the various categories of sound and television broadcasting services distributed by cable or satellite – Official Journal, 6 February 2002)**

FR

GB – Regulator Amends Code on Sports and Other Listed Events

The Independent Television Commission, the UK broadcasting regulator, has made minor amendments to its "Code on Sports and Other Listed and Designated Events". The Code relates to the listed events (drawn up by the Secretary of State for Culture, Media and Sport) for which the acquisition of exclusive rights for live television coverage is restricted, and for which broadcasting on an exclusive basis requires the Commission's consent. The code gives details of various matters relating to the treatment of such events, including the definition of "live" used, matters to be taken into account in giving or revoking consent for exclusive coverage, circumstances in which sanctions might not be imposed where it has been unreasonable to comply with restrictions on live coverage, and requirements relating to designated events arising from the "Television without Frontiers" Directive. This refers to the broadcast of an event to another European Economic Area (EEA) State where the event in question has been designated in that State (see R v Independent Television Commission, ex parte TV Danmark 1 Ltd, IRIS 2001-8: 9). Currently, the only other EEA States which have lists of designated events that have been verified by the European Commission are Germany and Italy; Denmark's list having been rescinded at the beginning of 2002.

The changes made in the new text of the Code make it clear that broadcasters should check whether an event has been designated in another EEA State before they acquire rights and should inform the Independent Television Commission as soon as they do so. It is also made clear that free-to-air broadcasters must be given an opportunity to acquire the rights on fair and reasonable terms, and that it is the broadcaster's responsibility, rather than that of the rightsholder, to seek the Independent Television Commission's consent for broadcasting. Reference to the Danish list has now been deleted from the Code. ■

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Independent Television Commission, "ITC Code on Sports and Other Listed and Designated Events, Revised January 2002", available at:
http://www.itc.org.uk/documents/upl_396.doc
For details of the amendments, see: "ITC Publishes Revised Code on Sports and Other Listed and Designated Events", ITC Press Release 08/02 of 1 February 2002, available at:
http://www.itc.org.uk/news/news_releases/show_release.asp?article_id=558

IE – Television Programme Standards

Under the Broadcasting Act, 2001, the Broadcasting Commission of Ireland has the role of drafting codes on matters of taste and decency, portrayal of violence and of sexual conduct in broadcast programmes (see IRIS 2001-4: 9). It is also required to implement rules governing advertising and sponsorship in accordance with the provisions of the "Television without Frontiers" Directive. The Broadcasting Complaints Commission hears complaints in relation to breaches of the relevant rules and codes. In February 2002, the Broadcasting Complaints Commission upheld a complaint against TV3, the national commercial television station. The station had through "human error" broadcast a cartoon with an adult storyline and containing unsuitable language at 9 a.m.

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on a Sunday morning when small children could be expected to be viewing. TV3 has been asked to make a public apology. *Radio Telefís Éireann* (RTÉ), the national public service broadcaster, also appears to have breached its own guidelines, the terms of the current code on advertising, and the statutory regulations with regard to news broadcasts. It carried in a news bulletin a live interview with one of the judges in its "Popstars" series. The judge, who is the originator of pop bands such as Boyzone and Westlife, was interviewed holding a bottle of Fanta. Fanta were the sponsors of the series. ■

"TV3 ordered to apologise for foul-mouthed cartoon show", *The Irish Independent*, 22 February 2002, available at: http://www.unison.ie/irish_independent/stories.php3?ca=9&si=695870&issue_id=6945

NO – Determination of Jurisdiction for Defamatory Statements in TV Broadcasting

Höyesterett (the Norwegian Supreme Court) recently ruled that the Norwegian courts were competent, in accordance with Article 5(3) of the Lugano Convention, to adjudicate in a cross-border dispute concerning the question of liability for allegedly defamatory statements in a television programme broadcast from Sweden on Swedish television, which was also received in Norway. Its reasoning was that the place of the harmful event was Norway, where the harmful effects occurred.

A broadcasting company, *Sveriges Television AB*, domiciled in Sweden, broadcast from Sweden on Swedish television a documentary produced by a journalist who was also domiciled in Sweden. The documentary was made with the intention of showing the restrictions on freedom of speech in Norway. The documentary contained accusations about Norwegian seal hunters violating Norwegian hunting regulations. The documentary was to a great extent based on a Norwegian film, which a Norwegian court had prevented from being shown to the public. The programme was broadcast twice and could be received by 630,000 people through the Norwegian cable-TV network, and also by a number of recipients in some southern parts of Norway without such a connection. The plaintiffs, Norwegian seal hunters domiciled in Norway, claimed that the accusations were defamatory.

The Norwegian Supreme Court was unanimous in its decision that the Norwegian courts were competent to adjudicate the matter according to Article 5(3) of the Lugano Convention.

Firstly, the Court examined the Norwegian law incorporating the Lugano Convention into domestic Norwegian law: Law No. 21 of 8 January 1993. According to Article 5(3) of the Norwegian-language version of the Convention, a person domiciled in a Member State can be sued in the courts of the place where the harmful event occurred. In the Norwegian text, this place is distinctively defined by way of parenthesis. It states that the place where the harmful event occurred is the place where the harmful damage occurred or the place of the event giving rise to that damage.

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Secondly, the Court presented the legal issues: whether Article 5(3) justifies the attribution of jurisdiction to the Norwegian courts and whether the alleged damage occurred in Norway.

Thirdly, the Court stated that the Norwegian version of the Convention is equally as authentic as the other authentic languages in which the Convention is drawn up. Further, the Court stated that the Lugano Convention must be interpreted in the same way as in the ECJ case, G.J. Bier BV v. Mines de Potasse d'Alsace (Case 21/76). The ECJ ruled on that occasion that the expression, "place where the harmful event ocurred", must be understood as being intended to cover both the place where the event happened, which may give rise to liability, and the place where that event results in damage, whenever those places are not identical.

Fourthly, the Court stated that the ECJ case, Fiona Shevill v. Presse Alliance SA (Case C-68/93), was of special interest. The Court stated that newspapers differ from broadcasting as media, but that the ruling was relevant and would be of guidance for the Court's reasoning. Applied to the legal issue in question in this case, the Shevill case argues in favour of justifying the attribution of jurisdiction to the Norwegian courts since the alleged defamatory statements broadcast in Sweden caused harmful effects in Norway.

The Court rejected the view that the protection of freedom of speech for Swedish television according to Article 10 of the European Convention on Human Rights could hinder the attribution of jurisdiction to the Norwegian courts. Even though this question was not posed in the Shevill case, the Court stated that this would not hinder the ECJ in its attribution of jurisdiction. Further, the Court incorporated into its judgment a statement made at para. 31 of the Shevill case: "In accordance with the requirement of the sound administration of justice, the basis of the rule of special jurisdiction in Article 5(3), the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation are territorially the best placed to assess the libel committed in that State and to determine the extent of the corresponding damage". The Court also argued on the basis of the ECJ's reasoning that this statement could not favour a restrictive interpretation of the part of the Convention concerning broadcasting. This statement would not have any less relevance for broadcasting than for newspapers. ■

Rt 2000 s 799, Judgment of *Norsk Höyesterett (kjennelse)*, (the Norwegian Supreme Court) of 17 October 2001, available at: http://www.lovdata.no/hr/hot-00-00799a.html

NO

PL – New Draft of Amendments to Broadcasting Act

On 14 January 2002 National Broadcasting Council (NBC) adopted a new broad draft of amendments to the Broadcasting Act of 29 December 1992 (with later amendments). The draft was subsequently forwarded to the Prime Minister on 23 January 2002 who decided to initiate a further legislative process. Nowadays, the draft is a subject of consultations between different governmental bodies. It comprises a number of sets of provisions.

The first set of proposed amending provisions concerns the issues aimed at achieving a better harmonisation with the EC Directive "Television Without Frontiers" and international agreements. The draft establishes new, normative criteria concerning the promotion of European works, including independent European works (so called "European quotas"), redefines the notion of "European work" in accordance with the guidelines of the aforementioned directive and includes new, very detailed criteria defining "jurisdiction". The draft introduces changes regarding the amount of share capital that can be held by foreign shareholders: as the date of accession will nullify any limits for natural and legal persons from

the European Union, the draft increases the actual limit for other foreign subjects from 33% to 49%.

The second set of amendments proposed addresses the challenges of the changing, dynamic situation in the audiovisual market and comprises some issues - urgently needing to be resolved – connected with the introduction of digital broadcasting technology. The draft introduces a new legal framework for such activities. Among other core provisions, it defines muliplexing as a junction of signals coming from different broadcasters in one digital signal in order to transmit it. The Introduction of such signal into a multiplex is treated as a new, concessionable way of broadcasting. The multiplex operator, who realises the process of multiplexing is obliged to obtain a concession for multiplex signal transmission, with the exclusion of transmission in cable networks; the latter shall be subject to registration of transmitted programmes. The draft determines conditions for the introduction of conditional access systems, understood as conditional access of all technical measures, which permit access by an authorised person to programme services and other services. It also determines mutual relations between multiplex operators and disposers of conditional access systems – that is a person who administrates technical means of conditional access. The draft also embraces issues concerning electronic programme guides (EPGs).

The third set of amending provisions refers to public service radio and television. It provides for the creation of two entities; Telewizja Polska S.A., which would produce and broadcast national service programs, and Polska Telewizja Regionalna S.A. – a producer and broadcaster of a national service program with additional regional programming. These proposals are a consequence of the process of progressive changes in the public regional media market. Another important proposal is the introduction of a programme licence for broadcasting for each public programme service. It should be noted that it would be of a different nature to a concession for commercial broadcasters. The programme licence for a public programme service is issued for the period of 4 years and determines such issues as programming standards, which should be observed by the public service broadcaster; especially those connected to cultivating national heritage, and other issues like daily transmission time or technical conditions. It was also stated that except in the case of licensable public programme service, a public broadcaster would be able to produce and broadcast other programme services in accordance with the general rules for a programme service subject to a concession.

The draft contains also new proposals concerning effective collection of the licence fee and the legal status of the programming archives of public media - including collection of phonograms, audiovisual works, libraries and other collections. The new provision states that the aforementioned public media archives shall become the property of public media entities without any remuneration. Access to such archives will be possible under the fee and on certain conditions, which will be determined by the NBC regulation.

Furthermore, a regulation for the procedure of renewal of concessions and new provisions concerning media concentration are envisaged. Moreover, the draft proposes new rules enabling effective enforcement of broadcasters obligations. The draft also defines conditions, which should be taken into account when determining the amount of payments – gathered by collecting societies – from broadcasters under the Act on Copyright and Related Rights of 4 February 1994 (with later amendments). When determining such payment the following conditions, such as amount of income gained from broadcasting of audiovisual works or artistic performances, character and scope of using such works or performances and amount of other payments borne by broadcasters due to audiovisual exploitation of such works and performances, should be taken into consideration. The draft limits the total annual amount of payments gathered from broadcasters by collecting societies to 3% of the last annual income obtained in connection with the exercised concession. ■

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Warsaw

Draft of amendments to the Broadcasting Act of 29 December 1992 (with later amendments).
PL

RO – Audiovisual Act to be Amended

Act 48/1992, which currently regulates the audiovisual market in Romania, is to be replaced in the second half of this year. The provisions of the new Bill, drawn up by the *Ministerul Comunicaţiilor şi Tehnologiei Informaţiei* (Ministry for Communication and Information Technology - MCTI), created a fair amount of controversy among the parliamentary specialist committees in February. The proposed regulations are designed to cut bureaucracy (the number of different stages or levels of approval in the award of licences for the electronic media is to be cut from four to two) and conform with the relevant EU legislation. The new Act will set out a new method of licence distribution, for example. The *Consiliul Naţional al Audiovizualului* (National Audiovisual Council - CNA) will remain the only authorised regulatory body as far as programme content is concerned. However, a new authority, known as the *Autoritate de Treglementare în Telecomunicaţii* (Authority for Telecommunications Regulation), will be established as an independent body with responsibility for taking decisions related to all technical aspects of electronic communication. Electronic media will therefore require two licences: one concerning content and the other relating to transmission technology. Another new development is the provision for a *Comisia Consultativă a Audiovizualului* (Audiovisual Consultative Committee), which is described as a "collegiate body for discussion and analysis of individual relevant questions". This committee will comprise 17 members, including representatives of the CNA, the Ministry for Culture, Education and the Arts, public radio and television and civil society. The Bill contains a series of "anti-cartel provisions" designed to safeguard pluralism and cultural diversity and to prevent an excessive concentration of information media being owned by a single company.

The Bill also provides for a significant increase, compared to the 1992 Audiovisual Act, in fines for infringements of its provisions. For example, fines varying from ROL 50 to 250 million (EUR 1 = ROL 28.121 on 26 February 2002) are to be imposed for offences such as failure to include sufficient European productions in programme schedules, transmission of advertising spots without the requisite optical and acoustic warning, broadcasting of pornographic material, subjective coverage of an election campaign or the transmission of programmes without technical authorisation. The penalties are much higher, between ROL 250 and 500 million, for breaches of copyright law. Fines ranging from ROL 200,000 to ROL 800,000 are applicable if whole programmes are broadcast without the producer's permission or if a broadcaster uses frequencies other than those stipulated in its licence. The Bill on audiovisual activities will be debated in both houses of the Romanian Parliament during March. ■

Mariana Stoican,
Radio Romania International

Media Bill, available at
http://mcti.ro/legislatie/proiecte/Legea%20audiovizualului%20.doc
RO

FILM

FR – Application to Have the Poster for the Film *Amen* Withdrawn

Amélie Blocman
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Before the latest Costa-Gavras film came out in France on 27 February, there was a good deal of fuss about the poster advertising the film. The poster represents a full-size red Catholic cross on a black background extended to merge with a swastika, with photographs of a priest and a German officer on either side and the title of the film – "Amen" – in the centre. Considering that such a poster constituted defamation in respect of a group of persons by reason of their belonging to a specific religion, the association *Alliance Générale contre le Racisme et pour le Respect de l'Identité Française et chrétienne* (AGRIF – general alliance against racism and for respect for the French and Christian identity) had the producer, director and distributor of the film summoned to appear before the judge sitting in urgent matters to have the disputed poster banned from being shown in public. The judge began by recalling that the principle of legality demanded that any restriction placed on freedom of expression had to fall within positive law. Consequently, only the existence of defamation within the meaning of legislation on the press could substantiate the alleged nuisance. The complainant claimed that the defamation of the Catholic community was the result of the confusion between the Christian cross and the swastika and the juxtaposition of two photographs representing the face of a member of the Catholic clergy and that of a Nazi officer, and lastly the choice of the title – "Amen" – suggesting that Catholics approved of Nazism. However, the judge found that the poster did not represent a Catholic cross extended into a swastika, as the lower branch of the latter was not at an angle but pointed downwards. The film was centred on the common desire on the part of a German officer (a fervent Christian) within the Nazi system and a member of the Catholic clergy to denounce the tragedy of the Holocaust to the whole world. The judge found that an open-minded reading of the poster indeed pointed to a desire to break the Nazi swastika and to plant once more on earth – as if to re-humanise it – the cross that is still worn by an entire community. He therefore concluded that the poster, being more enigmatic than demonstrative, was perfectly in keeping with what the film had to say and that it reflected current thinking in the French episcopacy. Furthermore, the judge considered that it was a fair reflection of what the filmmaker had to say, opening the debate on the controversy caused by the attitude of the Church during the war, which was still the subject of much questioning. ■

***Tribunal de grande instance de Paris (ordonnance de référé), 21 février 2002 – AGRIF c/ Sté Renn Productions et autres* (Regional Court of Paris (sitting in urgent matters), 21 February 2002 – AGRIF v. Société Renn Productions et al.)**

FR

NEW MEDIA / TECHNOLOGIES

AT – E-Commerce Act In Force

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Article 22 of Directive 2000/31/EC of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("E-Commerce Directive") required Member States to transpose the Directive into national law by 17 January 2002. Austria has met this requirement by adopting its own *E-Commerce-Gesetz* (E-Commerce Act - *ECG*), which entered into force on 1 January.

In some respects, the *ECG's* provisions extend beyond those of the Directive, which is why, under the 1999 *Notifikationsgesetz* (Notification Act), the legislative plans had to be and were communicated to the European Commission and the other Member States; some of the comments made by the Commission within the stipulated period were taken into account in the final version of the Act.

The most obvious area in which the Act exceeds the Directive's requirements concerns the liability of service providers. Firstly, service providers who provide users with a search engine or other electronic device to help find third-party information are, under certain conditions, exempted from responsibility for information located using such a device, although they may be liable under other provisions (para. 14 *ECG*); the aforementioned conditions are modelled on those applicable to access providers. Secondly, service providers who offer access to third-party information using a "link" are, under certain conditions, exempted from responsibility for that information, although they may be liable under other provisions (para. 17 *ECG*); the aforementioned conditions are modelled on those applicable to host providers. However, the *ECG* only limits liability if the illegality lies in the content accessed via the search engine or "link"; the service provider remains liable for any unlawful actions unconnected to such content (eg unauthorised duplication of copyrighted material). ■

***Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt (E-Commerce-Gesetz – ECG) und das Signaturgesetz sowie die Zivilprozessordnung geändert werden* (Federal Act regulating certain legal aspects of electronic commerce (E-Commerce Act – *ECG*) and amending the Electronic Signature Act and the Code of Civil Procedure); *Bundesgesetzblatt* (Federal Gazette) I No. 152 of 21 December 2001, pp. 1977 - 1984), available at http://www.bgbl.at/CIC/BASIS/bgblpdf/www/pdf/DDD/2001a15201**

DE

BH – Internet in Bosnia and Herzegovina – Unregulated Frontier

The Office of the High Representative (OHR), responsible for civil implementation, as well as for final interpretation of the General Framework Agreement for Peace in Bosnia and Herzegovina, better known as the Dayton Peace Agreement (DPA), has decided to combine the functions of the Independent Media Commission (IMC) and of the Telecommunications Regulatory Agency (TRA) to create a single communications regulator – the Communications Regulatory Agency (CRA) (see IRIS 2001–4: 4).

The Agency was formally established in March 2001 by the Decision of the High Representative. It is already operational, despite the fact that the Law on Communications is still in the draft phase. The CRA covers three main fields of modern communications: (1) telecommunications, (2) frequency spectrum management, and (3) electronic media.

It should be pointed out that the CRA has been entrusted only with the technical aspects of the Internet, but not with the content-related issues, as is case with broadcast media. On the other hand, there is a Press Council created as a self-regulator for the print media. But unlike the American formula, which basically regards Internet and online journalism as print media, in BiH the British model of a Press Council, which is not responsible for Internet, has prevailed.

Leaving aside the so-called digital divide, i.e., less than 2 percent of BiH's total population has access to the Internet, sooner or later things might be taken more seriously, particularly in the context of Council of

Europe's Ban on Internet Hate Speech, and the recently introduced European Convention on Cyber-Crime.

If so, it was expected that the OHR would have the final word to charge the CRA with additional – Internet content related – tasks. But, seemingly, that will not be the case. Recently, on 5 February 2002, the CRA sent drafts of four documents for consultations to BiH Council of Ministers, relevant Entity Ministries and Telecom operators. These included the document Licenses for Internet Service Providers. All documents have been drafted by the CRA's Telecommunications Division. Final drafts of the documents will be presented to CRA Council at the session in March of this year.

According to the draft document – License for Internet Service Providers – not yet available to the public –, Internet content requirements will be of marginal importance for the CRA. It clearly indicates the composition of the document itself in which out of 16 headings, only one deals with content requirements:

"5. Service Standards, 5.2. The Licensee shall ensure that objectionable, obscene, unauthorised or any other content, messages or communications infringing copyright and international and domestic regulations on Internet and public communications, in any form are not carried in his network."

All other headings prescribe technical and related modalities of Internet operations.

However, some media experts and press freedom watchdogs consider that the requirements for controlling and blocking content are so comprehensive that every ISP licensed in BiH would have to monitor every bit of data passing through their system in real-time. ■

Dusan Babic
Sarajevo-based media expert and analyst

CRA-Decisions are available at: http://www.ohr.int/decisions/mediadec/

EN

CH – Fighting Cybercrime

On 1 January 2003, the Swiss *Bundesrat* (Council of Ministers) will, in partnership with the cantons, set up a national coordination body for the fight against cybercrime. The new body, with responsibility for monitoring the Internet, will constitute a single point of contact for its foreign counterparts.

The fact that the Internet is so confusing often creates complex new problems when it comes to criminal prosecution, which in Switzerland is meant to be the responsibility of the cantons. International co-operation and national coordination must therefore be improved and extended. The new coordination body will be responsible for identi-fying punishable abuses of the Internet, coordinating investigations and preparing national reports on cybercrime. ■

Oliver Sidler,
Zug

CY – Convention on the Legal Protection of Services Based on, or Consisting of, Conditional Access Signed

Cyprus signed the Council of Europe Convention on the Legal Protection of Services based on, or consisting of, Conditional Access. According to the minutes of the process-verbal of signature, "On the twenty-fifth of January 2002, at the seat of the Council of Europe in Strasbourg, Mr Christophoros Yiangou, Ambassador, Permanent Representative of Cyprus to the Council of Europe, signed, subject to ratification, the European Convention on the Legal Protection of Services, based on, or consisting of, Conditional Access (ETS 178), which was opened for signature by the Member States of the Council of Europe and the other States Party to the European Cultural Convention, and by the European Community, in Strasbourg, on 24 January 2001."

The signing of the Convention followed Council of Ministers' Decision No. 54.442 of 21. January 2001 whereby it was decided:

"a. To authorize the Republic's Permanent Representative at the Council of Europe to sign the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access, pending its ratification.

b. To authorize the Minister of Foreign Affairs to submit to the House of Representatives a Law ratifying the Convention entitled ´The Law of 2002 Ratifying the Convention on the Legal Protection of Services based on, or consisting of, Conditional Access", which has been prepared by the Legal Service, for its enactment.

c. To authorize the Minister of Foreign Affairs to proceed with all the necessary actions in order to submit the ratification papers of the said Convention to the Secretary General of the Council of Europe".

The aim of the draft law and the Convention is to combat piracy in the field of accessing services offered on payment, by offering legal protection. It is noted that Article 4 of the said Convention prohibits the construction, importation, sale, possession or installation of specific illegal devices promoting this kind of piracy and for this purpose the draft law provides for penalties, of imprisonment and/or fines, and gives the right to any offended party to seek civil remedies in case of violation of this Article.

The draft law is expected to come before the competent committee of the House of Representatives during March 2002. ■

Andreas Christodoulou
Ministry of Interior Director of the Department for Cinema and Audiovisual Productions

Council of Ministers' Decision No. 54.442

EL

DE – Act on Protection of Conditional Access Services Adopted

On 1 March, the *Bundestag* (lower house of parliament) approved the *Gesetz über den Schutz von zugangskontrollierten Diensten und von Zugangskontrolldiensten* (Act on the protection of restricted access services and conditional access services - *ZKDSG*), thus transposing Directive 98/84/EC into German law.

The Act aims to protect conditional access services from unauthorised infringements, including technical measures or devices that enable a restricted access service to be used legally. Such services are defined as broadcasting, teleservices and media services provided against remuneration and which can only be accessed using a conditional access service (para. 2). By including the aforementioned types of service, the legislator is providing the necessary protection under civil and criminal law for the corresponding types of television and information society services covered by German law. ■

Alexander Scheuer
Institute of European Media Law (EMR) Saarbrücken/ Brussels

***Gesetz über den Schutz von zugangskontrollierten Diensten und von Zugangskontrolldiensten* (Act on the protection of restricted access services and conditional access services - *ZKDSG*), 1 March 2002.**

DE

RELATED FIELDS OF LAW

AL – Concerns about the Implementation of the Law on the Right to Information about Official Documents

Hamdi Jupe
Albanian Parliament

The People's Advocate (Ombudsman), Mr. Ermir Dobjani has recently expressed his concern regarding the improper implementation on the part of the Albanian Institutions of Law No. 8503 dated 30 June 1999 "The right to information about official documents". In a letter addressed to all the major state institutions and even to the Prime Minister, Mr. Dobjani points out the need for the implementation of the law passed two years ago, giving the relevant recommendations for this purpose.

Two years after the establishment of the Institution of the People's Advocate in Albania, the number of complaints made by citizens about the non-implementation of the law on the right to information about official documents ranks second in this institution, after the complaints about the courts and their decisions considered unfair by the citizens, which come first.

According to Article 23 of the Albanian Constitution, approved in November 1998,

1. The right to information is guaranteed.
2. Every one has the right, in accordance with the law, to get information about the activities of the organs of state, as well as about persons who exercise state functions.

Based on the Albanian Constitution, in 1999 the Albanian Parliament passed Law No. 8503, dated 30 June 1999 "The right to information about official documents". Pursuant to article 3 of this law, "Every person has the right to ask for information about official documents concerning the activity of the organs of state or persons who exercise state functions, without being obliged to explain their reasons. The public authority is obliged to give any information concerning an official document, unless unless the law provides otherwise".

The approval of this law was welcomed by the public opinion, especially by the Albanian independent press organs, which regard this law as a protection in their activity of informing public opinion on the activity of the organs of state. But the implementation of this law has had shortcomings that are becoming more obvious now that the investigative press is being more aggressive towards state corruption, as well as the abuse of power by different individuals or groups in power.

According to the People's Advocate, there are two main reasons for the non-implementation of the above-mentioned law: first, civil servants are unfamiliar with the law. That is why the Office of the People's Advocate has issued a recommendation regarding the way it should be put into practice. On the other hand, the non-implementation of the law is due to the lack of sanctions for the civil servants that do not act lawfully in applying the law. Based on Article 17 of the law "the procedures for complaints and the indemnities in the case of damage are regulated by law". But such a law is not approved yet. The People's Advocate, in his letter addressed to the Prime Minister, has asked for the drafting of this law. Pursuant to Article 18 of the Law, "The People's Advocate is responsible for the implementation of this law". ■

The Constitution of the Republic of Albania
Law No. 8503 dated 30 June 1999 "The right to information about official documents"
Letter from the People's Advocate, no. 310 dated 9.11.2000 to the Prime Minister.
Letter from the People's Advocate, no. 23, dated 22.1.2002.

SQ

AT – Copyright of Web Pages and Websites

Albrecht Haller
University of Vienna

According to established case-law, whether an intellectual creation and, therefore, an "original work" exists in the sense of the *Urheberrechtsgesetz* (Copyright Act), is a legal question which, in cases of dispute, is decided in the final instance by the *Oberster Gerichtshof* (Supreme Court - *OGH*). The *OGH* has recently been asked to rule on the originality of web pages and websites. Firstly, it decided that the layout of a web page is protected as commercial art (and therefore as a work of art) if it is an original creation. However, there is no copyright protection for purely manual, routine pieces of work based, for example, on the standard layouts contained in web page construction software and which display no individual creativity.

A second ruling concerned a website (ie a collection of web pages). If several web pages are independent from one another in terms of content, but are connected to one another via "links" and form a systematically arranged Internet site, they constitute a database, provided they are a unique intellectual creation. ■

***Beschluss des OGH vom 24. April 2001, Aktenzeichen 4 Ob 94/01d; Beschluss des OGH vom 10. Juli 2001, Aktenzeichen 4 Ob 155/01z.* (*OGH* decision, 24 April 2001, case no. 4 Ob 94/01d; *OGH* decision, 10 July 2001, case no. 4 Ob 155/01z). Both decisions are available at the judicial database of the federal legal information service (*RIS*), http://www.ris.bka.gv.at/jus/**

DE

CH – "Last Mile" Unbundling Delayed

Oliver Sidler,
Zug

In a decree issued on 30 January 2002, the Swiss Communications Commission (*ComCom*) announced its decision that, since "last mile" unbundling was not required by the current version of the *Fernmeldegesetz* (Telecommunications Act - *FMG*), it should reject a corresponding application for interconnection.

In order to reach this conclusion, the Commission had to decide whether unbundling was part of the requirement for interconnection under the *FMG* and whether current legal provisions were sufficient to force *Swisscom* to unbundle its network. In a ruling of 3 October 2001 concerning leased lines, the Swiss *Bundesgericht* (Federal Appeal Court) unequivocally interpreted the concept of interconnection in its narrower form. In its ruling, the Court concluded that there was no adequate legal basis for leased lines to be treated as a form of interconnection; the Court also dealt in great detail with the question of unbundling, explaining that this was not governed by interconnection rules. *ComCom* accepted the Appeal Court's verdict and dismissed the application for unbundling.

Investigations are currently under way to discover whether unbundling of local loops can be made obligatory by means of a decree or an amendment to the law.

Further liberalisation of the telecoms market is being delayed. Consumers will not enjoy any noticeable price cuts in the foreseeable future because most telecommunications service providers in Switzerland are currently in a period of consolidation. Alternatives to Swisscom's monopoly of the local loop, such as cable, WLL or Powerline, require enormous investment and cannot be introduced quickly enough. The *FMG*, which entered into force in 1998, has not yet fulfilled its aim of offering the public and the industry diverse, value-for-money, high-quality telecommunications services. True competition only exists when telecommunications service providers are able to offer their services directly to the customer, without being forced to use a prescribed third-party service offered by a single provider. The lack of competition is leading to high prices, particularly in the wholesale (eg ADSL) and leased line markets. Retailers are suffering because of reduced profit margins and companies using leased lines are having to pay high prices. The current price structure is also hindering new, innovative technologies that use broadband transmission channels. Although the need to restructure the Swiss telecommunications market cannot be blamed solely on the failure to liberalise the "last mile", unbundling is urgently required. ■

***Verfügung der Eidgenössischen Kommunikationskommission vom 5. Februar 2002 in Sachen TDC Switzerland AG gegen Swisscom AG* (Decree of the *Eidgenössischen Kommunikationskommission* (Swiss Communications Commission), 5 February 2002, in the case of *TDC Switzerland AG* v. *Swisscom AG*)**

DE

CY – European Journalists to Have same Rights as their Cypriot Colleagues

Andreas Christodoulou
Ministry of Interior Director of the Department for Cinema and Audiovisual Productions

The Cyprus Council of Ministers decided on 5 February 2002 to approve the draft Law entitled "Press (Amending) Law of 2002" and to authorize the Minister of Foreign Affairs to submit it to the House of Representatives to be voted into law (Decision No. 55.083).

The purpose of the draft law is the harmonisation of the basic law with the *acquis communautaire*, and more especially with Articles 43 to 48 of the European Union Treaty safeguarding the right of free establishment, Articles 49 to 55 regarding the right of free provision of services, and Articles 56 to 60 regarding free of movement of capital.

Specifically, this law removes all discrimination between Cypriot citizens and citizens of member states of the European Union *vis-à-vis* the exercise of the profession of journalist, the issuing of newspapers, the establishment of printing houses and the payment of relevant fees.

The draft law is expected to come before the competent House of Representatives committee during March 2002. ■

Decision No. 55.083

EL

DE – Cartels Office Opposes Liberty's Purchase of Cable Networks

Alexander Scheuer
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In a decision of 25 February 2002, the *Bundeskartellamt* (Federal Cartels Office - *BKartA*) prohibited Liberty Media's planned acquisition of six regional cable networks owned by Deutsche Telekom AG (DT). The authority had already expressed reservations about the American media company's proposal in a warning issued at the end of January; following subsequent negotiations with the company, which were apparently unsuccessful, the Cartels Office's misgivings concerning the restriction of competition in the cable TV market have prevailed.

The Cartels Office ruled that the merger, investigated in accordance with German competition law (para. 37 of the *Gesetz gegen Wettbewerbsbeschränkungen* - Competition Restrictions Act – *GWB*), would strengthen dominant positions in the supply market for broadcasting signals to final customers (final customer market: cable television), the market for feeding signals into broadband cable networks (input market) and the market for the supply of network level 3 signals to operators of network level 4 (signal supply market). The *BKartA* did not believe that the different broadcasting access and distribution methods were interchangeable, since many users had no terrestrial or satellite alternatives to broadband cable reception due to legal provisions or actual circumstances.

Unlike the companies that had previously acquired cable networks in Baden-Württemberg, Hessen and North Rhine-Westphalia, Liberty was a potential competitor of Deutsche Telekom because it already held dominant positions with existing cable network operators; moreover, it was also a programme content provider.

The other business activities announced by Liberty were also a factor in the cartel authority's decision. Liberty's reluctance to use MHP (Multimedia Home Platform), the generally accepted standard in Germany, in the decoders it planned to distribute to cable subscribers would have hindered the chances of open, competitive cable access, especially since the decoders would not have been equipped with a Common Interface. Furthermore, Liberty's efforts to acquire as many network level 4 operators (supplying television signals to households) as possible or to co-operate with them on an exclusive basis were detrimental to fair competition.

Liberty also put a damper on the hope, expressed during media policy discussions linked to the sale of DT's cable networks, that digital cable capacities would be rapidly increased because the network would have operated at the same level (around 510 Mhz) until further notice. In the opinion of the Cartels Office, this would not have allowed sufficient competition to DT's dominant market position in the local voice telephony market. Consequently, the likelihood of improvements in other markets was considered insufficient to justify the merger. ■

***Beschluss des Bundeskartellamts vom 25. Februar 2002* (Decision of the Federal Cartels Office, 25 February 2002), available at**
http://www.bundeskartellamt.de/260202PressekonferenzLiberty.pdf
***Abmahnung vom 31. Januar 2002* (Warning of 31 January 2002), available at**
http://www.bundeskartellamt.de/31_01_2002.html

DE

DE – *Bundestag* Adopts Copyright Contract Act

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On 25 January 2002, the German *Bundestag* (lower house of parliament) adopted a Government Bill aimed at strengthening the contractual position of authors and performing artists. The Government's objective in tabling the Bill was to ensure that authors and performing artists receive reasonable remuneration and, for the sake of legal certainty, to provide guidelines on what constitutes reasonable remuneration. The idea was that legal disputes between authors and users should, as far as possible, be avoided.

Since the legislative process began in May last year (see IRIS 2001-7: 14), the Bill has undergone several important amendments. The main areas of discussion were para. 32 of the original draft, which sought to guarantee authors the right to reasonable remuneration, and the provisions of para. 36 concerning joint remuneration rules. Both the *Bundesländer* and users had suggested, in relation to para. 32, that the juxtaposition of contractual and legal rights to remuneration could cause problems in practice. The lack of a clear definition of the term "reasonable" was also criticised. The Bill as adopted explains that contractual arrangements for remuneration take precedence (para. 32.1.1), but also gives authors the right to appeal if the agreed level of remuneration is not reasonable (para. 32.1.3). Each sector of the industry is to be responsible for defining what is "reasonable" and the relevant associations will agree rules concerning what is classified as normal remuneration in their particular sector (para. 36.1). The arbitration proceedings originally provided for in cases when the parties fail to agree on such rules have been replaced with a different form of mediation. Unlike an arbitral award, the decision taken to resolve such a situation is only legally binding if it is accepted by both parties. However, it should act as an indication of how "reasonable" remuneration is ultimately to be defined (para. 36.3).

The *Bundestag* believes that the new Bill represents a successful compromise between the interests of the media and those of authors. However, the trade unions have already condemned it as a wasted opportunity, since they doubt whether it is sufficient to guarantee reasonable remuneration.

The *Bundesrat* (upper house of parliament) also approved the Bill on 1 March 2002. ■

***Beschluss des Bundestages (BT-Drucksache 14/8058)* (Decision of the *Bundestag* (doc. 14/8058)), available on the Internet at:**
http://www.bmj.bund.de/frames/ger/themen/urheberrecht_und_patente/10000493/index.html?sid=67034efdcb4bb20d671a127c6d6a79af

DE

FR – Scope of Legal Licence for Phonograms

Amélie Blocman
Légipresse

The Court of Appeal in Versailles and the Court of Cassation have in turn reached decisions on the very difficult question of the scope of the legal licence instituted by Article L. 214-1 of the French Intellectual Property Code (CPI). The first case was brought by the phonogram producer Universal Music against the television channel TF1; the complaint was that, without authorisation from the producer, TF1 used a number of phonograms as background music for the trailers for a television film and a variety programme. The case brought before the Court of Cassation was similar; the phonogram producer EMI complained that the television channel France 2 had, without its authorisation, used a famous phonogram by the Beatles to provide the music for the credits of one of its broadcasts. Both cases revolved around the interpretation of Article L. 214-1 of the CPI. This makes provision for waiving the principle of prior authorisation from the producer in the following terms: "Where a phonogram has been published for commercial purposes, neither the performer nor the producer may object to (…) 2) either its broadcasting or the simultaneous, integral distribution by cable of such a broadcast." Producers consider that the reproduction of phonograms – which is necessary before they can be broadcast – does not fall within the scope of Article L. 214-1, and they therefore claim that they are able to oppose such reproduction or at the very least must first be asked for their authorisation under Article L. 213-1 of the CPI, which provides that "the authorisation of the phonogram producer is required before its phonogram may be reproduced (…) or communicated to the public other than as provided for in Article L. 214-1". The television channels claimed that, on the contrary, there was no need for them to ask the producers for authorisation, by virtue of Article L. 214-1. The two courts were therefore called upon to deliberate on the scope of the latter provision, referred to as a "legal licence". Did this cover the reproduction that was necessary before broadcasting?

The Court of Appeal in Versailles, reversing earlier case law (see IRIS 2000-10: 12), began by stating clearly that Article L. 214-4 of the CPI – waiving the principle of prior authorisation from the producer – should be interpreted strictly. The exceptions provided for in the text therefore did not include – as in the case in question – the communication to the public of a reproduction of a phonogram by means of a videogram in which it was incorporated. In line with this, the Court of Cassation confirmed a few days later that the disputed recording, made by incorporating the commercial phonogram in the videogram, could not be included among the waivers provided for in Article L. 214-1 of the CPI to the principle of authorisation from the producer laid down in Article L. 213-1 of the same Code. The highest court in the land has thus clearly settled a matter that has been a source of fierce dispute for a number of years. ■

***Cour d'appel de Versailles (12e ch. sect. 1), 17 janvier 2002 – TF1 c/ Universal Music et autres* (Court of Appeal in Versailles (12th chamber, 1st section), 17 January 2002 – TF1 v. Universal Music et al)**
***Cour de cassation (1re c. civ.), 29 janvier 2002 – Emi c/ France 2* (Court of Cassation (1st chamber, civil), 29 January 2002 – EMI v. France 2)**

FR

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AGENDA

IViR International Copyright Law Summer Course
8 - 12 July 2002
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