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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of De Diego Nafria v. Spain

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In 1997, Mariano de Diego Nafria, a former civil servant with the rank of inspector at the Bank of Spain, was dismissed after he had written a letter to the Bank's inspectorate accusing the Governor and other senior officials of the Bank of different kinds of irregularities. After the Spanish Courts had confirmed the legitimate character of the dismissal of de Diego Nafria because of the defamatory character of the letter, de Diego Nafria alleged a violation of Article 10 of the European Con-

vention (freedom of expression) before the European Court of Human Rights, submitting that the content of the letter reflected the truth and that the terms held to be offensive were taken out of context.

The European Court, by five votes to two, held that there had been no violation of Article 10, observing that the Spanish courts had pertinently and correctly weighed the conflicting interests against each other before concluding that the applicant had overstepped the acceptable limits of the right to criticise. The European Court was of the opinion that the judgment in which the Madrid High Court had ruled that it was insulting to make serious and totally unsubstantiated accusations against a number of directors of the Bank of Spain could not be considered unreasonable or arbitrary.

In the dissenting opinion it was emphasised that this case is very similar to the case of *Fuentes Bobo v. Spain* (see IRIS 2000-4: 2). In a judgment of 29 February 2000, the Court came to the conclusion in that case that the dismissal of the applicant because of his criticism of the management of the Spanish public broadcasting organisation, *TVE*, was to be considered a breach of Article 10 of the Convention. According to the dissenting judges, the Court should have taken the same approach in the instant case of de Diego Nafria. The dissenting judges referred in particular to the fact that the letter was not made public, nor distributed to the media, but was exclusively and directly addressed to the Bank's inspectorate. These observations and arguments could not, however, dissuade the majority of the European Court from reaching the conclusion that there had been no violation of Article 10 of the Convention, as the national courts had not exceeded their margin of appreciation in penalising the applicant. ■

Judgment by the European Court of Human Rights (First Section), Case of De Diego Nafria v. Spain, Application no. 46833/99 of 14 March 2002, available at:
<http://www.echr.coe.int>

FR

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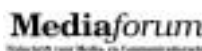
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European Court of Human Rights: Case of Gaweda v. Poland

In 1993 and 1994, the Polish authorities refused to register two of Mr. Gaweda's periodicals. The title of the first periodical was *The Social and Political Monthly – A European Moral Tribunal*, while the second request concerned the registration of a periodical under the title *Germany – a Thousand year-old Enemy of Poland*. Both requests for registration were dismissed by the Polish courts, which considered that the name of a periodical should be relevant to its content, in accordance with the 1984 Press Act and the Ordinance of the Minister of Justice on the registration of periodicals. With regard to the first periodical, the Polish courts were of the opinion that the proposed name implied that a European institution was supporting or publishing the magazine, which was untrue and misleading. With regard to the second title, the courts considered that the title was also in conflict with reality, in that it unduly concentrated on negative aspects of Polish-German relations, thus giving an unbalanced picture of the facts.

In a judgment of 14 March 2002, the European Court of Human Rights reached the conclusion that both refusals to register the title of a periodical magazine violated the applicant's freedom of expression, as guaranteed by the European Convention on Human Rights. The

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Judgment by the European Court of Human Rights (Former Section I), Case of Gaweda v. Poland, Application no. 26229/95 of 14 March 2002, available at:
<http://www.echr.coe.int>

EN

Parliamentary Assembly's Culture Committee Criticises Media Situation in Italy

At its meeting in Paris on 13 March 2002, the Committee on Culture, Science and Education of the Parliamentary Assembly of the Council of Europe expressed a critical opinion on the media situation in Italy.

The Committee stressed its concern at the fact that the Italian Government is, directly or indirectly, in control of all national television channels. It found that the Italian Prime Minister, Silvio Berlusconi, is still the owner of three national private television channels and of an

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Statement by the Parliamentary Assembly's Culture Committee on the media situation in Italy, Press Release of the Council of Europe's Parliamentary Assembly, 13 March 2002, Doc. 139a(2002).

Legislatura 14° - Disegno di legge N. 1206, presentato dal Presidente del Consiglio dei ministri (BERLUSCONI) e dal Ministro per la funzione pubblica (FRATTINI) di concerto col Ministro per gli affari regionali (LA LOGGIA) (V. Stampato Camera n. 1707) approvato dalla Camera dei deputati il 28 febbraio 2002 Trasmesso dal Presidente della Camera dei deputati alla Presidenza il 1° marzo 2002, Norme in materia di risoluzione dei conflitti di interessi (Draft Law No. 1206 on norms in the matter of the resolution of conflicts of interests, approved by the Chamber of Deputies on 28 February and transmitted by the President of the Chamber of Deputies to the President [of the Republic] on 1 March), available at: <http://www.senato.it/bgt/ShowDoc.asp?leg=14&id=00015453&tipodoc=Ddlpres&modo=PRODUZIONE>

IT

ECRI – Recommendations for Media in Second Report on Ireland

On 23 April, the European Commission against Racism and Intolerance (ECRI) made public its Second Report on

European Court did not consider the obligation to register a title of a newspaper or a magazine as such to be a violation of Article 10 of the Convention. However, as the refusal of registration amounted to an interference with the applicant's right to freedom of expression, this refusal must be in accordance with Article 10 § 2 of the Convention, which means in the first place that the interference with the freedom of expression of the applicant must be "prescribed by law". Referring to Article 20 of the Press Act and Article 5 of the Ordinance on the registration of periodicals, the Court was of the opinion that the applicable law was not formulated with sufficient precision, as the terms used in the Law and in the Ordinance are ambiguous and lack the clarity that one would expect in a legal provision of this nature. According to the Court, the legal provisions suggest rather that registration could be refused where the request for registration did not conform to the technical details specified in Article 20 of the Press Act. The refusal to allow registration because of the allegedly misleading title is to be considered as "inappropriate from the standpoint of freedom of the press".

The European Court also observed that in the present case, the domestic courts had imposed a kind of prior restraint on "a printed media" in a manner which entailed a ban on publication of entire periodicals on the basis of their titles. Such an interference would at least require a legislative provision which clearly authorised the courts to do so. According to the European Court, the interpretation given by the Polish courts to Article 5 of the Ordinance introduced new criteria, which were not foreseeable on the basis of the text specifying situations in which the registration of a title can be refused. Therefore, the Court was of the opinion that the nature of the interference with the applicant's exercise of his freedom of expression was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention. Accordingly, the Court unanimously concluded that there had been a violation of Article 10 of the Convention. ■

important publishing group, and has not yet isolated himself from running his media interests. The Committee noted, on this point, that a law was recently passed by the Italian Parliament to legitimise ownership by a government minister of important media outlets. In reality, the Bill in question, *Disegno di legge N. 1206, Norme in materia di risoluzione dei conflitti di interessi* (Draft Law No. 1206 on norms in the matter of the resolution of conflicts of interests), has so far only been approved by one of the two Chambers of the Italian Parliament, so it is not yet definitively binding.

In addition, the Prime Minister is head of the coalition government that appoints the Presidents of both Chambers, who are in charge of nominating the governing board which administers three State-owned national television channels (RAI). On the other hand, the Committee noted that the new five-member governing board of RAI is led by a former President of the Constitutional Court and includes two representatives from the opposition parties.

Finally, the Committee supported the plea made by Italian President Carlo Azeglio Ciampi for plurality and independence of the media as a vital element of democracy. ■

Ireland (even though it was adopted on 22 June of last year). The Report contains, *inter alia*, provisions concerning the media. These provisions are largely confined to Section M, entitled "Media", which reads:

"Although some media report widely and in a respon-

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sible fashion on issues of racism and intolerance, and concerning minority groups, others have tended to adopt a very negative attitude, particularly towards asylum seekers and refugees and towards members of the Traveller Community. A particular problem which has been noted is the use of radio phone-in programmes by members of the public as a platform for airing prejudices and racist views, which apparently are not sufficiently countered by the programme presenters. Noting that such reporting fuels public prejudices and misconceptions, ECRI urges the media professions to apply codes of self-regulation" (para. 63).

The Report proceeds to identify the tendency of some segments of the media to portray asylum-seekers and

Second Report on Ireland (Adopted on 22 June 2001), Doc. No. CRI (2002) 3 of 23 April 2002, European Commission against Racism and Intolerance, available at: http://www.coe.int/T/E/Human_Rights/Ecri/1-ECRI/2-Country-by-country_approach/Ireland/CBC2-Ireland.asp#TopOfPage (EN); http://www.coe.int/T/F/Droits_de_l'Homme/Ecri/1-ECRI/2-Pays-par-pays/Irlande/CBC2-Irlande%20.asp#TopOfPage (FR); **The Prohibition of Incitement to Hatred Act, 1989, available at:** <http://193.120.124.98/ZZA19Y1989.html>

EN

EUROPEAN UNION

European Commission: ZDF's Involvement in Media Park Not Considered Aid

Alexander Scheuer
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The European Commission has decided that the plan of *Zweites Deutsches Fernsehen (ZDF)* to create a media park right next to its main headquarters in Mainz (Rheinland-Pfalz) does not constitute State aid in the sense of Article 87 of the EC Treaty.

The Commission has dismissed a number of complaints about the project from the private sector, mainly from leisure park operators based in the region.

refugees in a negative light as an issue of particular concern (para. 79). The use of inappropriate, disparaging terms in political discourse concerning such groups and their interests is also mentioned in the same vein.

It is noted in the Report that the Irish Government has announced its intention to review the Prohibition of Incitement to Hatred Act, 1989; the main piece of legislation in Ireland dealing with so-called "hate speech". The purpose of this review – which is being conducted under the auspices of the Department of Justice, Equality and Law Reform and is still ongoing – is understood to be to render the Act more effective, in light of the dearth of prosecutions in which it has resulted since its enactment.

ECRI is a body of the Council of Europe that is committed to the advancement of the struggle against racism, xenophobia, anti-Semitism and other forms of intolerance in Europe. A primary focus of its work is the compilation and, ultimately, the publication of individual country reports. Its country-by-country approach involves a number of procedural stages: the drafting of a report; confidential dialogue with the national authorities of the country in question; a contact visit by ECRI Rapporteurs to the relevant country (in the case of a second country report) and the drafting of the final report. The first country report on Ireland was published in September 1997 (after having been adopted in June 1996).

ECRI also released country reports on Estonia, Georgia, Italy and Romania on 23 April 2002. ■

As things stand, ZDF would be responsible for planning the media park and, by granting licences for the use of certain brand names and products, would allow a private company to run the park.

Following earlier national civil proceedings concerning the alleged use of licence fee revenue and the compatibility of the plan with ZDF's public service remit, including from a competition law point of view, the *Oberlandesgericht Koblenz* (Koblenz Court of Appeal) ruled in ZDF's favour. ■

NATIONAL

BROADCASTING

AL – Call for Dismissal of the Directional Council of the Public Radio and Television

Hamdi Jupe
Albanian
Parliament

On 4 April 2002, an opposition parliamentary group called for the dismissal of the *Keshilli Drejtues i Radiotelevizionit Publik Shqiptar* (Directional Council of the Albanian Public Radio and Television – KD i RTSH), and for it to be replaced. The request came after a bitter parliamentary debate over the Annual Report 2001, which was presented by the Directional Council.

The KD i RTSH consists of 15 members, all independent intellectuals, who are elected by Parliament. The Directional Council elects the main directors of public radio and television, sanctions and controls all their

activities, and reports on them every year to the Parliament. During this year's annual debate in Parliament, many MPs from various political parties criticised the activities of the Albanian Public Radio and Television, alleging professional incapacity, political partiality, misuse of public funds, and corruption of the directors of Radio and Television.

The members of the Directional Council enjoy special protection under Law No. 8410 "On Public and Private Television in the Republic of Albania" of 30 September 1998, and can be dismissed only for reasons explicitly defined in the law. The Permanent Parliamentary Committee on Means of Public Information is the state authority that proposes the candidates for the Directional Council to the Parliament for appointment and may also request their dismissal. The Committee started its examination of the request from the opposition, after which it will present its proposals to the Parliament. ■

Request of the Parliamentary Group of the Democratic Party of Albania for the dismissal of the Directional Council of Public Radio and Television.

SQ

BA – Law on the Public Broadcasting System of Bosnia and Herzegovina Still in Draft Form

In mid-April the Council of Ministers of Bosnia-Herzegovina (BA) again rejected the Draft Law on Public Service Broadcasting (PBS) in BA. If it had been approved, the next and final step would have been the BA-Parliament, the House of Peoples (Upper House) and the House of Representatives (Lower House). The Draft Law was rejected because of certain issues such as the appointment of members of the advisory bodies, and their mandate. The core provisions were not disputed. The Draft Law is composed of 77 articles, 2 parts, and the following 11 sections: General Provisions, Subscription Fee, Programming, Advertising and Sponsorship, Other Obligations, Rights, Assets and Financing, Governance and Management, Termination of PBS in BA, Transitional, and Final Provisions

Dusan Babic,
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researcher
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FR – Definition of an “Audiovisual Work”

On 21 March, David Kessler, Director General of the CNC, delivered his report on defining audiovisual works to Catherine Tasca, Minister for Culture and Communications. He had been asked to produce this study following the dispute that occurred in November 2001 (see IRIS 2002-1: 8) as a result of the CNC placing the television programme “Popstars” in the ‘audiovisual works’ category, thereby providing its producer with access to the support fund. The programme was consequently included by the CSA in its calculation of works included in quotas. The existence of a number of different ideas of the concept of an audiovisual work is probably, at least in part, behind the controversy. Although the report concludes that it is not urgently necessary to question the CNC’s definition of an audiovisual work, it would appear to be appropriate in the long term to clarify a number of points and even introduce some restrictions.

All the professional groups concerned have been consulted. An initial consensus was reached; this excludes debates from the definition of an audiovisual work given by the French Intellectual Property Code. In audiovisual communication law, there has been a “negative” definition since 1990. It is set out in Article 2 of Decree no. 90-66 of 14 January 1990, amended in 1992, according to which “audiovisual works constitute those broadcasts that do not fall within any of the following categories: full-length cinema films, news broadcasts and magazines, variety, games, broadcasts other than fiction produced mainly in the studio, sports coverage, advertising, teleshopping, self-promotion and teletext services”. This is an open-ended definition that includes, but not exclusively, fiction programmes, documentaries, broadcasts produced to a minor degree in the studio, video clips, broadcasts of live shows and short films and other types of programmes also covered by this definition such

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Légipresse

L’œuvre audiovisuelle, report by David Kessler, Director General of the CNC, to the Minister for Culture and Communications, March 2002

FR

FR – Protective Measures Ordered against Télédiffusion de France (TDF)

The Act of 1 August 2000 lays down the method for allocating broadcasting resources and the conditions

It regulates the basic elements for the functioning of the PBS in BA, e.g., the relationship among the three public broadcasters envisaged by the system, their registration, as well as their activities and organisation.

The three PBS envisaged for BA are:

- Public Broadcasting Service of BA (PBS BA), the umbrella media body/outlet;
- Radio-television of the Federation of BA (RTV FBA), the public broadcaster of the Federation of BA, and
- Radio-television of *Republika Srpska* (RT RS), the public broadcaster of RS.

All three public broadcasters should promote culture, education, pluralism, but PBS BA programming should in particular reflect the national, religious, historic, cultural, linguistic and other characteristics of the constituent peoples and citizens of BA. The Draft Law is in line with the so-called Second Decision on Restructuring the Public Broadcasting System in BA of 23 October 2000, made by the Office of the High Representative (OHR), which envisaged a mixed funding system. That system may include viewers’ and listeners’ subscription fees, appropriations from the general public budget, and revenue from advertising. Assuming the passage of the law, PBS was scheduled to start broadcasting on 7 May 2002. ■

as, for example, entertainment programmes. The consultations carried out by the CNC’s Director make it possible to highlight a number of important points: the representatives of authors and producers invite those responsible to focus support on programmes involving creation with a cultural objective, excluding programmes where the element of original creation is of lesser importance. Thus the genre that still raises a problem is that of magazine programmes. This is a hybrid genre sometimes involving an assembly of reporting assignments and extracts from advertising spots, or alternatively making use of original creative work when they include true documentaries. The *Société des Auteurs, Compositeurs et Editeurs de Musique* (French association of authors, composers and music editors – SACEM), for example, stresses the need to exclude reality television broadcasts. The *Union Syndicale de la Production Audiovisuelle* (French audiovisual production union – USPA), for its part, proposes excluding all magazine programmes, although documentaries lasting at least 26 minutes would be included as audiovisual works. Broadcasters also raise the problem of magazine programmes, but their regret is that some types of reporting assignments are not eligible to apply for the support fund.

On the whole, broadcasters are not in favour of changing the definition of an audiovisual work, as they are unwilling to upset the fragile balance that has been achieved since 1990. David Kessler’s report therefore concludes, while recalling the fundamental imperative of the cultural objective, that it would not be advisable to introduce a hasty revision of the definition of an audiovisual work merely in order to stabilise the legal environment, particularly in view of the fact that the digital television environment is still in the making. The report adds that an administrative court might find that the introduction at this stage of regulatory measures defining an audiovisual work in even more restrictive terms than those of the 1990 Decree would not comply with the law. Catherine Tasca reacted by expressing her agreement on the need to maintain a broad definition of an audiovisual work and confirmed that the author of the report should continue the consultations and dialogue. ■

under which the *Conseil supérieur de l’audiovisuel* (the audiovisual regulatory authority - CSA) can issue the authorisations necessary for setting up terrestrially-broadcast digital television. On 24 July last year, the CSA called for applications for this type of broadcasting (see

IRIS 2001-8: 8 and 2002-2: 9) and published a list of 29 broadcasting areas corresponding to the initial planning stage. In opening up this new market, the company Antalis is offering to provide television programme editors with the technical operations necessary for the transmission and broadcasting of their services to the public. Under Article 51 of the Act of 30 September 1986 (as amended), the company *Télévision Diffusion de France* (TDF) has a monopoly of the broadcasting and transmission of the programmes of the public-service channels by all analog telecommunications means, and the private channels also usually make use of it for broadcasting and transmitting their programmes. As a technical broadcaster, TDF offers services aimed at allowing technical broadcasters entering this market, such as the company Antalis, to provide a service of digitally broadcasting audiovisual signals. However, Antalis can only provide this service if it has access to the TDF broadcasting sites which are essential to its future activity. As Antalis considers that the cost of access to these sites is prohibitive and that it is not able to install equivalent equipment within the time set by the legislator under reasonable economic and technical conditions, it referred these practices to the *Conseil de la concurrence* (Council on

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Blocman
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Decision no. 02-MC-04 of the *Conseil de la concurrence* on 11 April 2002 in response to an application by Antalis for protective measures to be ordered

FR

LV – Turmoil over Public Service Broadcasting still Going On

While the competition for the new Director General of the public television channel in Latvia is still going on (see IRIS 2002-4: 8), the discussion on the role of the public service media heightens.

A group of private media seized the chance by writing a letter addressed to the President, the Prime Minister, the National Radio and Television Council, political parties and various mass media, stating that according to the existing legislation a public service media organisation may sell advertising time well below the market price. As the authors of the letter pointed out, the public Radio and Television often benefits from state financial aid. Therefore the private media call for the de-commercialisation of the public media either by the introduction of a fee for public service broadcasting or by

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Press Release on the Letter from the private media available at:
<http://www.delfi.lv/archive/index.php?id=2974026>

LV

PL – New Broadcasting Act Amendments Planned

In mid-March, the Polish Government adopted a Bill proposing another series of amendments to the Broadcasting Act. The Parliamentary Committee for Culture is currently discussing the Bill.

As a precaution against media concentration, a new rule is to be introduced, banning simultaneous ownership of national television and radio stations. In addition,

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Competition) as it considers that they constitute unfair competition, and called on the Council to order protective measures.

Taking into account the opinion delivered by the CSA on 6 March 2002, which concluded that TDF held a “dominant position on the market for technical terrestrial broadcasting of television services”, the Council, in its decision of 11 April, does not exclude the possibility of TDF being in a dominant position in the French market for analog terrestrial broadcasting of television channels and hence, potentially, in its related market (the distribution of technical services for digital terrestrial broadcasting), in which it could be in competition with Antalis. Nor does it exclude the possibility of the TDF sites located in the 29 zones defined by the CSA constituting an essential infrastructure to which TDF would be obliged to propose access under transparent, non-discriminatory, cost-oriented conditions. The Council also recalled that the economic balance of this broadcasting sector depended on the existence, as regards the technical broadcasting of programmes, of a choice of transparent offers that could be compared; the tariffs offered to Antalis by TDF did not appear to meet these criteria. In order to be able to make such an offer to editors in early 2003, the CSA ordered “the company TDF to communicate to any undertaking which so requests [including Antalis] an offer of hosting services covering, at a minimum, the terrestrial broadcasting sites installed in the 29 initial broadcasting zones defined by the CSA in its decision of 24 July 2001, detailed item by item, and including tariff conditions drawn up objectively, transparently and without discrimination, at a price taking account of the direct and indirect cost of the services offered, including a reasonable remuneration of the capital committed”. ■

setting up minimum limits for advertising prices.

However, the prospects of independent financing for public media in Latvia are quite uncertain. The Prime Minister has already announced that to him the draft project concerning the introduction of licence fees handed in by the National Broadcasting Council of Latvia is not convincing. The draft envisages the establishment of a new Licence Fee Centre (with 37 employees) that would create a database of licence fee payers and issue and dispatch invoices. Furthermore, it would develop control mechanisms. In the Prime Minister’s view, it would be a very expensive reform whose fruit were to be harvested only in the future because the effective introduction of a completely new system would naturally take a long time. Instead the Government is ready to discuss additional state financing for the public mass media in Latvia.

As a response to the open letter from the private media, a parliamentary discussion is going to be organised by one of the major parties in order to find solutions to the problems of public service broadcasting in Latvia. ■

press companies will not be allowed to own shares in television operators, while restrictions relating to local and regional radio broadcasting licences are also planned.

It is also proposed that current rules governing the term of office of members of the Radio and Television Council should be amended. Whereas up to now, in contrast to the four-year parliamentary term, Council members have served a non-renewable six-year term, it is now proposed that they should be allowed to remain in office for a much longer period of time. ■

PT – New Government to Reduce Public Service Broadcasting

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The recently elected centre-right government, led by Prime Minister Durão Barroso, has clarified its intention to cut down on public broadcasting. The Programme of

Point 5 - Comunicação Social (Media) of Chapter III - Investir na Qualificação dos Portugueses (To Invest in the Qualification* of the Portuguese People) of Programa do XV Governo Constitucional (Programme of the XV Constitutional Government), available at: http://www.portugal.gov.pt/NR/rdonlyres/ei4xqaeqz7ag7vwmszuhxitam2qbsz2kix6tkpgddvmpk4hdexwgd722ping5qzwc5pfbwrcngqkljgr6prrrc/Prog_15_Governo.pdf

PT

SE – Advertising Breaks Allowed

Greger Lindberg
Swedish
Broadcasting
Commission

Ever since Sweden first allowed television advertising in 1991, the rule has been that advertisements must be placed between programmes. The purpose of designing the legislation in this manner was to protect the audience from excessive interruptions of programmes. However, broadcasters soon found a way around this by broadcasting mini-programmes, thus creating artificial intermissions. Television advertisements could then legally be placed in the intermissions. As a consequence, the “breaks” in the original programme became longer and, most likely, more irritating to the viewers. The fact that Swedish legislation was stricter in this respect than

The Radio and Television Act is available at
http://www.grn.se/verksamheten/rattskallor_content_radiotv lagen.asp

SV

SE – Virtual Advertising Incompatible with Swedish Law

Greger Lindberg
Swedish
Broadcasting
Commission

Swedish broadcaster Canal Plus broadcasts (English) Premier League football matches by satellite and cable. Virtual advertisements were displayed on each side of the goals during play and in the centre circle during intermissions. The messages were inserted, not by the broadcaster, but by the production company. In a recent decision, the Swedish Broadcasting Commission found

Decision SB 121/02 of the Swedish Broadcasting Commission, issued on 6 March 2002, available at: <http://www.grn.se/PDF-filer/Namndbes/2002/sb121-02.pdf>

SV

the XV Constitutional Government, approved by the Portuguese Parliament on 17 April 2002, states that Radiotevisão Portuguesa (RTP, S.A.) will be split into two companies. The Government holds that one will remain State-owned, keeping the present broadcasting licence and public service commitments; as yet it has not put forward any plans regarding the future of the other.

Public service radio will also be restructured; of the four existing national channels, the Government intends to keep two (RDP 1 and RDP Internacional), “alienate” Antena 3 and review the operating framework for Antena 2. ■

that of most European countries also put Swedish broadcasters at a disadvantage compared to many of their competitors based elsewhere.

The Radio and Television Act has now been amended, expanding from 1 April 2002 the possibility of interrupting programmes for advertising; bringing Swedish legislation closer to the “Television without Frontiers” Directive. The wording of the relevant provisions closely follows that of the Directive. The mini-programme loophole can still be exploited, but the broadcasters’ incentive to use it has been greatly reduced.

In two respects, the Swedish legislation is still stricter than the Directive. Advertising targeting children and advertising in children’s programmes are still banned and the amount of advertising allowed remains lower, at 10% and 8-10 minutes per hour. ■

that Canal Plus was the responsible broadcaster. It also found that the messages constituted television advertising and were thus in breach of the rules concerning the separation and insertion of advertising messages.

This decision follows from a previous decision by the Commission, confirmed by the Court of Appeal, whereby it was established that advertisements adapted for television broadcasting that are inserted in the programme constitute television advertising. It is of no consequence whether the advertisement has been inserted by the final broadcaster, another broadcaster or a production company.

There is no appeal against the Broadcasting Commission’s decision, which carried no penalty. ■

The table on signatures and ratifications that we usually publish in the fifth issue of IRIS, and that you will find *infra*, has been modified in several regards.

The following treaties that featured under the heading "Council of Europe" are no longer listed, as they have not recorded any changes over a significant period of time:

- European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories, ETS no. 053,

- European Agreement concerning Programme Exchanges by means of Television Films, ETS no. 027,

- European Agreement on the Protection of Television Broadcasts, ETS no: 034,

- Protocol to the European Agreement on the Protection of Television Broadcasts, ETS no. 054,

- Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts, ETS no. 081,

- Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts, ETS no. 113,

- Third Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts, ETS no. 131.

For information on these treaties, please consult IRIS 2001-5: 7-10 or the website of the Council of Europe at: <http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>

Under the heading "Copyright" we eliminated the WIPO-UNESCO Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties of 13 December 1979 and its Protocol. To date as concerns Member States of the Council of Europe both instruments have been signed and ratified only by the Czech Republic and Slovakia and has not yet entered into force. For further information please contact Ms Juliet Happy Dumas (Office of Legal and Organisation Affairs, WIPO) at juliet.dumas@wipo.int

In 2001, EUTELSAT and INTELSAT were transformed from intergovernmental organisations to private companies and therefore the Convention establishing the European Telecommunications Satellite Organisation and the Agreement relating to the International Telecommunications Satellite Organisation are no longer listed. For information on Eutelsat (S.A.) see www.eutelsat.com and on Intelsat, Ltd., see www.intelsat.com

On the other hand, several new treaties were agreed upon by the Council of Europe Member States and have now been included in the list. These are:

- European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access, ETS no. 178 (see IRIS 2000-9: 3),

- European Convention on the protection of the Audiovisual Heritage, ETS no. 183 (see IRIS 2001-9: 3),

- Protocol to the European Convention on the protection of the Audiovisual Heritage, on the protection of the Television Productions, ETS no. 184 (see IRIS 2001-9: 3),

- Convention on Cybercrime, ETS no. 185 (see IRIS 2001-10: 3 and IRIS 2002-3: 3).

Copyright

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2002)

| | WIPO Berne Convention for the protection of the literary and artistic works (1886) | | | WIPO Copyright Treaty (1996) | | | WIPO Performances and Phonograms Treaty (1996) | | | Declarations |
|---|---|--|-----------------------------------|------------------------------------|------------------------|------------|--|------------------------|---------------|--------------|
| | Date on which the State became Party to the Convention | Latest Act of the Convention to which the State is Party PA : Paris, BR : Bruxelles, RO : Rome, ST : Stockholm | Signatures | Ratifications and Accessions | Entry into force | Signatures | Ratifications and Accessions | Entry into force | | |
| Member States of Council of Europe | | | | | | | | | | |
| AD | Andorra | | | | | | | | | |
| AL | Albania | 06/03/1994 | PA : 06/03/1994 | | | | | 17/05/2001: A | 20/05/2002 | |
| AM | Armenia | 19/10/2000 | PA : 19/10/2000 | | | | | | | |
| AT | Austria | 01/10/1920 | PA : 21/08/1982 | 30/12/1997 | | | 30/12/1997 | | | |
| AZ | Azerbaijan | 04/06/1999 | PA : 04/06/1999 | | | | | | | |
| BA | Bosnia-Herzegovina | 01/03/1992 | PA : 01/03/1992 | | | | | | | |
| BE | Belgium | 05/12/1887 | PA : 29/09/1999 | 19/02/1997 | | | 19/12/1997 | | | |
| BG | Bulgaria | 05/12/1921 | PA : 04/12/1974 | | 29/03/2001: A | 06/03/2002 | | 29/03/2001: A | 20/05/2002 | |
| CH | Switzerland | 05/12/1887 | PA : 25/09/1993 | 29/12/1997 | | | | 29/12/1997 | | |
| CY | Cyprus | 24/02/1964 | PA : 27/07/1983 | | | | | | | |
| CZ | Czech Republic | 01/01/1993 | PA : 01/01/1993 | | 10/10/2001: A | 06/03/2002 | | 10/10/2001: A | 20/05/2002 | |
| DE | Germany | 05/12/1887 | PA : 10/10/1974 - PA : 22/01/1974 | 20/12/1996 | | | | 20/12/1996 | | |
| DK | Denmark | 01/07/1903 | PA : 30/06/1979 | 28/10/1997 | | | | 28/10/1997 | | |
| EE | Estonia | 26/10/1994 | PA : 26/10/1994 | 29/12/1997 | | | | 29/12/1997 | | |
| ES | Spain | 05/12/1887 | PA : 10/10/1974 - PA : 19/02/1974 | 20/12/1996 | | | | 20/12/1996 | | |
| FI | Finland | 01/04/1928 | PA : 01/11/1986 | 09/05/1997 | | | | 09/05/1997 | | |
| FR | France | 05/12/1887 | PA : 10/10/1974 - PA : 15/12/1972 | 09/10/1997 | | | | 09/10/1997 | | |
| GB | United Kingdom | 05/12/1887 | PA : 02/01/1990 | 13/02/1997 | | | | 13/02/1997 | | |
| GE | Georgia | 16/05/1995 | PA : 16/05/1995 | | 04/07/2001: A | 06/03/2002 | | 04/07/2001: A | 20/05/2002 | |
| GR | Greece | 09/11/1920 | PA : 08/03/1976 | 13/01/1997 | | | | 13/01/1997 | | |
| HR | Croatia | 08/10/1991 | PA : 08/10/1991 | 15/12/1997 | 03/07/2000: R | 06/03/2002 | | 15/12/1997 | 20/05/2002 | |
| HU | Hungary | 14/02/1922 | PA : 10/10/1974 - PA : 15/12/1972 | 29/01/1997 | 27/11/1998: R | 06/03/2002 | | 29/01/1996 | 27/11/1998: R | 20/05/2002 |
| IE | Ireland | 05/10/1927 | BR : 05/07/1959 - ST : 21/12/1970 | 19/12/1997 | | | | 19/12/1997 | | |
| IS | Iceland | 07/09/1947 | PA : 25/08/1999 - PA : 28/12/1984 | | | | | | | |
| IT | Italy | 05/12/1887 | PA : 14/11/1979 | 20/12/1996 | | | | 20/12/1996 | | |
| LI | Liechtenstein | 30/07/1931 | PA : 23/09/1999 | | | | | | | |
| LT | Lithuania | 14/12/1994 | PA : 14/12/1994 | | 18/06/2001: A | 06/03/2002 | | 26/01/2001: A | 20/05/2002 | |
| LU | Luxembourg | 20/06/1888 | PA : 20/04/1975 | 18/02/1997 | | | | 18/02/1997 | | |
| LV | Latvia | 11/08/1995 | PA : 11/08/1995 | | 22/02/2000: A | 06/03/2002 | | 22/03/2000: A | 20/05/2002 | |
| MD | Moldova | 02/11/1995 | PA : 02/11/1995 | 19/09/1997 | 13/03/1998: R | 06/03/2002 | | 19/09/1997 | 13/03/1998: R | 20/05/2002 |
| MK | TfYRoMacedonia | 08/09/1991 | PA : 08/09/1991 | | | | | | | |
| MT | Malta | 21/09/1964 | RO : 21/09/1964 - PA : 12/12/1977 | | | | | | | |
| NL | Netherlands | 01/11/1912 | PA : 30/01/1986 - PA : 10/01/1975 | 02/12/1997 | | | | 02/12/1997 | | |
| NO | Norway | 13/04/1896 | PA : 11/10/1995 - PA : 13/06/1974 | | | | | | | |
| PL | Poland | 28/01/1920 | PA : 22/10/1994 - PA : 04/08/1990 | | | | | | | |
| PT | Portugal | 29/03/1911 | PA : 12/01/1979 | 31/12/1997 | | | | 31/12/1997 | | |
| RO | Romania | 01/01/1927 | PA : 09/09/1998 | 31/12/1997 | 01/02/2001: R | 06/03/2002 | | 31/12/1997 | 01/02/2001: R | 20/05/2002 |
| RU | Russian Federation | 13/03/1995 | PA : 13/03/1995 | | | | | | | |
| SE | Sweden | 01/08/1904 | PA : 10/10/1974 - PA : 20/09/1973 | 31/10/1997 | | | | 31/10/1997 | | |
| SI | Slovenia | 25/06/1991 | PA : 25/06/1991 | | 19/11/1999: R | 06/03/2002 | | 12/12/1997 | 19/11/1999: R | 20/05/2002 |
| SK | Slovakia | 01/01/1993 | PA : 01/01/1993 | 29/12/1997 | 14/01/2000: R | 06/03/2002 | | 29/12/1997 | 14/01/2000: R | 20/05/2002 |
| SM | San Marino | | | 12/12/1997 | | | | | | |
| TR | Turkey | 01/01/1952 | PA : 01/01/1996 | | | | | | | |
| UA | Ukraine | 25/10/1995 | PA : 25/10/1995 | | 29/11/2001: A | 06/03/2002 | | 29/11/2001: A | 20/05/2002 | |
| | EC | | | 20/12/1996 : S | | | | 20/12/1996 | 20/12/1996 | |
| Non Member States | | | | | | | | | | |
| BY | Belarus | 12/12/1997 | PA : 12/12/1997 | 08/12/1997 | 15/07/1998: R | 06/03/2002 | | 08/12/1997 | 15/07/1998: R | 20/05/2002 |
| IL | Israel | 24/03/1950 | BR : 01/08/1951 - ST : 26/02/1970 | 25/03/1997 | | | | 25/03/1997 | | |
| MA | Morocco | 16/06/1917 | PA : 17/05/1987 | | | | | | | |
| MC | Monaco | 30/05/1889 | PA : 23/11/1974 | 14/01/1997 | | | | 14/01/1997 | | |
| TN | Tunisia | 05/12/1887 | PA : 16/08/1975 | | | | | | | |
| VA | Holy See | 12/09/1935 | PA : 24/04/1975 | | | | | | | |
| | EC | | | | | | | | | |
| Other States¹⁾ | | | | | | | | | | |
| AR | Argentina | 10/06/1967 | PA : 19/02/2000 - PA : 08/10/1980 | 18/09/1997 | 19/11/1999 | 06/03/2002 | | 18/09/1997 | 19/11/1999: R | 20/05/2002 |
| AU | Australia | 14/04/1928 | PA : 01/03/1978 | | | | | | | |
| BR | Brazil | 09/02/1922 | PA : 20/04/1975 | | | | | | | |
| CA | Canada | 10/04/1928 | PA : 26/06/1998 | 22/12/1997 | | | | 22/12/1997 | | |
| CN | China | 15/10/1992 | PA : 15/10/1992 | | | | | | | |
| DZ | Algeria | 19/04/1998 | PA : 19/04/1998 | | | | | | | |
| EG | Egypt | 07/06/1977 | PA : 07/06/1977 | | | | | | | |
| IN | India | 01/04/1928 | PA : 06/05/1984 - PA : 10/01/1975 | | | | | | | |
| JP | Japan | 15/07/1899 | PA : 24/04/1975 | | 06/06/2000: R | 06/03/2002 | | | | |
| MX | Mexico | 11/06/1967 | PA : 17/12/1974 | 18/12/1997 | 18/05/2000: R | 06/03/2002 | | 18/12/1997 | 17/11/1999: R | 20/05/2002 |
| NZ | New-Zealand | 24/04/1928 | RO : 04/12/1947 | | | | | | | |
| TH | Thailand | 17/07/1931 | PA : 02/09/1995 - PA : 29/12/1980 | | | | | | | |
| US | USA | 01/03/1989 | PA : 01/03/1989 | 12/04/1997 | 14/09/1999: R | 06/03/2002 | | 12/04/1997 | 14/09/1999: R | 20/05/2002 |
| ZA | South Africa | 03/10/1928 | BR : 01/08/1951 - PA : 24/03/1975 | 12/12/1997 | | | | 12/12/1997 | | X |

1) Selection

Copyright and others

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2002)

| | UNESCO Universal Copyright Convention (Geneva, 1952) | | WIPO-UNESCO-ILO Rome Convention ¹⁾ (26 October 1961) | | WIPO-UNESCO-BIT Phonograms Convention, Geneva ²⁾ (29 October 1971) | WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974) | WIPO Treaty on the international registration of audiovisual works (20 April 1989) | | ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975) |
|---|---|----------------|---|--------------|---|---|--|-----------------------------|--|
| | Ratification, Accession, and Declaration 1952 Text | 1971 Text | Ratification or Accession | Declarations | Ratification Accession / Acceptance Declaration | Date on which State became Party to the Convention | Signature | Ratification / Accession | Date of ratification |
| Member States of Council of Europe | | | | | | | | | |
| AD Andorra | 22/01/1953 : R | | | | | | | | |
| AL Albania | | | 01/09/2000 : A | | | | | | |
| AM Armenia | | | | | | 13/12/1993 | | | |
| AT Austria | 02/04/1957 : R | 14/05/1982 : A | 09/06/1973 : R | X | 21/08/1982 : R | 06/08/1982 | 20/04/1989 | 27/02/1991 : R | 30/12/1986 |
| AZ Azerbaijan | 07/04/1997 : D | | | X | 01/09/2001 : A | 06/08/1982 | 20/04/1989 | 27/02/1991 : R | 30/12/1986 |
| BA Bosnia-Herzegovina | 12/07/1993 : D | 12/07/1993 : D | | | | 06/03/1992 | | | |
| BE Belgium | 31/05/1960 : R | | 02/10/1999 : A | X | | | | | 03/10/1978 |
| BG Bulgaria | 07/03/1975 : A | 07/03/1975 : A | 31/08/1995 : A | | 06/09/1995 : A | | | | |
| CH Switzerland | 30/12/1955 : R | 21/06/1993 : R | 24/09/1993 : A | X | 30/09/1993 : R | 24/09/1993 | | | 19/11/1976 |
| CY Cyprus | 19/09/1990 : A | 19/09/1990 : A | | | 30/09/1993 : A | | | | |
| CZ Czech Republic | 26/03/1993 : D | 26/03/1993 : D | 01/01/1993 : D | X | 01/01/1993 : D | | | 01/01/1993 : R | |
| DE Germany | 03/06/1955 : R | 18/10/1973 : R | 21/10/1966 : R | X | 18/05/1974 : R | 25/08/1979 | | | 26/07/1977 |
| DK Denmark | 09/11/1961 : R | 11/04/1979 : R | 23/09/1965 : R | X | 24/03/1977 : R | | | | 15/09/1977 |
| EE Estonia | | | 28/04/2000 : A | | 28/05/2000 : A | | | | |
| ES Spain | 27/10/1954 : R | 10/04/1974 : R | 14/11/1991 : R | X | 24/08/1974 : R | | | | 07/02/1979 |
| FI Finland | 16/01/1963 : R | 01/08/1986 : R | 21/10/1983 : R | X | 18/04/1973 : R | | | | 01/01/1995 |
| FR France | 14/10/1955 : R | 11/09/1972 : R | 03/07/1987 : R | X | 18/04/1973 : R | | 20/04/1989 | 27/02/1991 : R | 30/10/1980 |
| GB United Kingdom | 27/06/1957 : R | 19/05/1972 : R | 18/05/1964 : R | X | 18/04/1973 : R | | | | 28/03/1978 |
| GE Georgia | | | | | | | | | |
| GR Greece | 24/05/1963 : A | | 06/01/1993 : A | | 09/02/1994 : A | 22/10/1991 | 29/12/1989 | | |
| HR Croatia | 06/07/1992 : D | 06/07/1992 : D | 20/04/2000 : A | | 20/04/2000 : A | 08/10/1991 | | | |
| HU Hungary | 23/10/1970 : A | 15/09/1972 : R | 10/02/1995 : A | | 28/05/1975 : A | | 20/04/1989 | 07/08/1998 : A | |
| IE Ireland | 20/10/1958 : R | | 19/09/1979 : R | X | | | | | 10/12/1980 |
| IS Iceland | 18/09/1956 : A | | 15/06/1994 : A | X | | | | | |
| IT Italy | 24/10/1956 : R | 25/10/1979 : R | 08/04/1975 : R | X | 24/03/1977 : R | 07/07/1981 | | | 20/02/1978 |
| LI Liechtenstein | 22/10/1958 : A | 11/08/1999 : R | 12/10/1999 : A | X | 12/10/1999 : R | | | | |
| LT Lithuania | | | 22/07/1999 : A | | 27/01/2000 : A | | | | |
| LU Luxembourg | 15/07/1955 : R | | 25/02/1976 : A | X | 08/03/1976 : R | | | | |
| LV Latvia | | | 20/08/1999 : A | X | 23/08/1997 : A | | | | |
| MD Moldova | 18/04/1997 : D | | 05/12/1995 : A | X | 17/07/2000 : A | | | | |
| MK TFRoMacedonia | 30/04/1997 : D | 30/04/1997 : D | 02/03/1998 : A | X | 02/03/1998 : A | 17/11/1991 | | | |
| MT Malta | 19/08/1968 : A | | | | | | | | |
| NL Netherlands | 22/03/1967 : R | 30/08/1985 : R | 07/10/1993 : A | X | 12/10/1993 : A | | | | 06/02/1979 |
| NO Norway | 23/10/1962 : R | 07/05/1974 : R | 10/07/1978 : A | X | 01/08/1978 : R | | | | 30/12/1986 |
| PL Poland | 09/12/1976 : A | 09/12/1976 : A | 13/06/1997 : A | X | | | 29/12/1989 | | |
| PT Portugal | 25/09/1956 : R | 30/04/1981 : A | | | 11/03/1996 | | | 14/11/2000 | |
| RO Romania | | | 22/10/1998 : A | X | 01/10/1998 : A | | | | |
| RU Russian Federation | 27/02/1973 : A | 09/12/1994 : A | | | 13/03/1995 : A | 20/01/1989 | | | |
| SE Sweden | 01/04/1961 : R | 27/06/1973 : R | 18/05/1964 : R | X | 18/04/1973 : R | | | | 06/04/1976 |
| SI Slovenia | 05/11/1992 : D | 05/11/1992 : D | 09/10/1996 : A | X | 15/10/1996 : A | 25/06/1991 | | | |
| SK Slovakia | 31/03/1993 : D | 31/03/1993 : D | 01/01/1993 : D | X | 01/01/1993 : D | | | 01/01/1993 : R | |
| SM San Marino | | | | | | | | | |
| TR Turkey | | | | | | | | | |
| UA Ukraine | 17/01/1994 : D | | | | 18/02/2000 : A | | | | |
| Non Member States | | | | | | | | | |
| BY Belarus | 29/03/1994 : D | | | | | | | | |
| IL Israël | 06/04/1955 : R | | | | 01/05/1978 : R | | | | |
| MA Morocco | 08/02/1972 : A | 28/10/1975 : A | | | | 30/06/1983 | | | |
| MC Monaco | 16/06/1955 : R | 13/09/1974 : R | 06/12/1985 : R | X | 02/12/1974 : R | | | | |
| TN Tunisia | 19/03/1969 : A | 10/03/1975 : R | | | | | | | |
| VA Holy See | 05/07/1955 : R | 06/02/1980 : R | | | 18/07/1977 : R | | | | |
| EC | | | | | | | | | |
| Other States³⁾ | | | | | | | | | |
| AR Argentina | 13/11/1957 : R | | 02/03/1992 : R | | 30/06/1973 : A | | 29/04/1992 | 29/07/1992 : A | |
| AU Australia | 01/02/1969 : R | 29/11/1977 : A | 30/09/1992 : A | X | 22/06/1974 : A | 26/10/1990 | | | |
| BR Brazil | 13/10/1959 : R | 11/09/1975 : R | 29/09/1965 : R | | 28/11/1975 : A | | | 26/06/1993 : R | |
| CA Canada | 10/05/1962 : R | | 04/06/1998 : A | X | | | 21/12/1989 | | * |
| CN China | 30/07/1992 : A | 30/07/1992 : A | | | 30/04/1993 : A | | | | |
| DZ Algeria | 28/05/1973 : A | 28/05/1973 : A | | | | | | | |
| EG Egypt | | | | | 23/04/1978 : A | | 30/05/1989 | | |
| IN India | 21/10/1957 : R | 07/01/1988 : R | | | 12/02/1975 : R | | 20/04/1989 | | |
| JP Japan | 28/01/1956 : R | 21/07/1977 : R | 26/10/1989 : A | X | 14/10/1978 : R | | | | |
| MX Mexico | 12/02/1957 : R | 31/07/1975 : R | 18/05/1964 : R | | 21/12/1973 : R | 25/08/1979 | 20/04/1989 | 27/02/1991 : R | |
| NZ New Zealand | 11/06/1964 : A | | | | 13/08/1976 : A | | | | |
| TH Thailand | | | | | | | | | |
| US USA | 06/12/1954 : R | 18/09/1972 : R | | | 10/03/1974 : R | 07/03/1985 | 20/04/1989 | | |
| ZA South Africa | | | | | | | | | |

* Canada is a cooperating state since 1979. The cooperation agreement is effective until 31 December 2009. – 1) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations – 2) Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms – 3) Selection

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2002)

| | European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (24 January 2001) | | | | European Convention on the Protection of the Audiovisual Heritage (8 November 2001) | | | | Protocol to the Convention of the Audiovisual Heritage, on the protection of Television Production (8 November 2001) | | | | Convention on Cybercrime (23 November 2001) | | | |
|---|--|---|---|---|---|---|---|---|--|---|---|---|---|---|---|---|
| | A | B | C | D | A | B | C | D | A | B | C | D | A | B | C | D |
| Member States of Council of Europe | | | | | | | | | | | | | | | | |
| AD Andorra | | | | | | | | | | | | | | | | |
| AL Albania | | | | | | | | | | | | | 23/11/2001 | | | |
| AM Armenia | | | | | | | | | | | | | 23/11/2001 | | | |
| AT Austria | | | | | | | | | | | | | 23/11/2001 | | | |
| AZ Azerbaijan | | | | | | | | | | | | | | | | |
| BA Bosnia-Herzegovina | | | | | | | | | | | | | | | | |
| BE Belgium | | | | | | | | | | | | | 23/11/2001 | | | |
| BG Bulgaria | | | | | 08/11/2001 | | | | 08/11/2001 | | | | 23/11/2001 | | | |
| CH Switzerland | 06/06/2001 | | | | | | | | | | | | 23/11/2001 | | | |
| CY Cyprus | 25/01/2002 | | | | | | | | | | | | 23/11/2001 | | | |
| CZ Czech Rep. | | | | | | | | | | | | | | | | |
| DE Germany | | | | | | | | | | | | | 23/11/2001 | | | |
| DK Denmark | | | | | | | | | | | | | | | | |
| EE Estonia | | | | | | | | | | | | | 23/11/2001 | | | |
| ES Spain | | | | | | | | | | | | | | | | |
| FI Finland | | | | | | | | | | | | | 23/11/2001 | | | |
| FR France | 24/01/2001 | | | | 14/03/2002 | | | | 14/03/2002 | | | | 23/11/2001 | | | |
| GB United Kingdom | | | | | | | | | | | | | 23/11/2001 | | | |
| GE Georgia | | | | | | | | | | | | | | | | |
| GR Greece | | | | | 08/11/2001 | | | | 08/11/2001 | | | | 23/11/2001 | | | |
| HR Croatia | | | | | | | | | | | | | 23/11/2001 | | | |
| HU Hungary | | | | | | | | | | | | | 23/11/2001 | | | |
| IE Ireland | | | | | | | | | | | | | 28/02/2002 | | | |
| IS Iceland | | | | | 08/11/2001 | | | | 08/11/2001 | | | | 30/11/2001 | | | |
| IT Italy | | | | | | | | | | | | | 23/11/2001 | | | |
| LI Liechtenstein | | | | | | | | | | | | | | | | |
| LT Lithuania | | | | | | | | | | | | | | | | |
| LU Luxembourg | 09/04/2001 | | | | | | | | | | | | | | | |
| LV Latvia | | | | | | | | | | | | | | | | |
| MD Moldova | 27/06/2001 | | | | | | | | | | | | 23/11/2001 | | | |
| MK FYROMacedonia | | | | | | | | | | | | | 23/11/2001 | | | |
| MT Malta | | | | | | | | | | | | | 17/01/2002 | | | |
| NL Netherlands | | | | | | | | | | | | | 23/11/2001 | | | |
| NO Norway | 24/01/2001 | | | | | | | | | | | | 23/11/2001 | | | |
| PL Poland | | | | | | | | | | | | | 23/11/2001 | | | |
| PT Portugal | | | | | 08/11/2001 | | | | 08/11/2001 | | | | 23/11/2001 | | | |
| RO Romania | 24/01/2001 | | | | | | | | | | | | 23/11/2001 | | | |
| RU Russian Federation | | | | | | | | | | | | | | | | |
| SE Sweden | | | | | | | | | | | | | 23/11/2001 | | | |
| SI Slovenia | | | | | | | | | | | | | | | | |
| SK Slovakia | | | | | | | | | | | | | | | | |
| SM San Marino | | | | | | | | | | | | | | | | |
| TR Turkey | | | | | | | | | | | | | | | | |
| UA Ukraine | | | | | | | | | | | | | 23/11/2001 | | | |
| Non member States | | | | | | | | | | | | | | | | |
| BY Belarus | | | | | | | | | | | | | | | | |
| IL Israel | | | | | | | | | | | | | | | | |
| MA Morocco | | | | | | | | | | | | | | | | |
| MC Monaco | | | | | | | | | | | | | | | | |
| TN Tunisia | | | | | | | | | | | | | | | | |
| VA Holy See | | | | | | | | | | | | | | | | |
| EC | | | | | | | | | | | | | | | | |
| Other States | | | | | | | | | | | | | | | | |
| CA Canada | | | | | | | | | | | | | 23/11/2001 | | | |
| JP Japan | | | | | | | | | | | | | 23/11/2001 | | | |
| US USA | | | | | | | | | | | | | 23/11/2001 | | | |
| ZA South Africa | | | | | | | | | | | | | 23/11/2001 | | | |

A: Signature - Accession (AC) - Acceptance (AP), B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD)

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 30 APRIL 2002)

| | European Convention on Transfrontier Television (5 May 1989) | | | | Protocol amending the European Convention on Transfrontier Television (9 September 1998) | | European Convention on cinematographic co-production (2 October 1992) | | | | European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994) | |
|---|--|----------|----------|-------|--|----------|---|----------|----------|-------|--|----------|
| | A | B | C | D | B | C | A | B | C | D | A | B |
| Member States of Council of Europe | | | | | | | | | | | | |
| AD Andorra | | | | | | | | | | | | |
| AL Albania | 02/07/99 | | | | | | | | | | | |
| AM Armenia | | | | | | | | | | | | |
| AT Austria | 05/05/89 | 07/08/98 | 01/12/98 | DE | 01/10/00 | 01/03/02 | 09/02/94 | 02/09/94 | 01/01/95 | DE | | |
| AZ Azerbaijan | | | | | | | | 28/03/00 | 01/07/00 | DE/TD | | |
| BA Bosnia-Herzegovina | | | | | | | | | | | | |
| BE Belgium | | | | | | | 19/02/98 | | | | 06/08/98 | |
| BG Bulgaria | 20/05/97 | 03/03/99 | 01/07/99 | DE | 15/03/00 | 01/03/02 | | | | | | |
| CH Switzerland | 05/05/89 | 09/10/91 | 01/05/93 | RE/DE | 01/10/00 | 01/03/02 | 05/11/92 | 05/11/92 | 01/04/94 | DE | 11/05/94 | |
| CY Cyprus | 03/06/91 | 10/10/91 | 01/05/93 | DE | 24/02/00 | 01/03/02 | 19/05/99 | 29/11/00 | 01/03/01 | | 10/02/95 | 21/12/98 |
| CZ Czech Republic | 07/05/99 | | | | | | 24/02/97 | 24/02/97 | 01/06/97 | | | |
| DE Germany | 09/10/91 | 22/07/94 | 01/11/94 | DE | 01/10/00 | 01/03/02 | 07/05/93 | 24/03/95 | 01/07/95 | DE | 18/04/97 | |
| DK Denmark | | | | | | | 02/10/92 | 02/10/92 | 01/04/94 | DE | | |
| EE Estonia | 09/02/99 | 24/01/00 | 01/05/00 | DE | 24/01/00 | 01/03/02 | 13/12/96 | 29/05/97 | 01/09/97 | DE | | |
| ES Spain | 05/05/89 | 19/02/98 | 01/06/98 | DE | 01/10/00 | 01/03/02 | 02/09/94 | 07/10/96 | 01/02/97 | DE | 11/05/94 | |
| FI Finland | 26/11/92 | 18/08/94 | 01/12/94 | RE/DE | 01/10/00 | 01/03/02 | 09/05/95 | 09/05/95 | 01/09/95 | DE | | |
| FR France | 12/02/91 | 21/10/94 | 01/02/95 | DE | 05/02/02 | 01/03/02 | 19/03/93 | 09/11/01 | 01/03/02 | DE | | |
| GB United Kingdom | 05/05/89 | 09/10/91 | 01/05/93 | DE/TD | 01/10/00 | 01/03/02 | 05/11/92 | 09/12/93 | 01/04/94 | DE | 02/10/96 | |
| GE Georgia | | | | | | | 21/11/01 | | | | | |
| GR Greece | 12/03/90 | | | | | | 17/11/95 | | | | | |
| HR Croatia | 07/05/99 | 12/12/01 | 01/04/02 | | 12/12/01 | 01/03/02 | 02/10/01 | | | | | |
| HU Hungary | 29/01/90 | 02/09/96 | 01/01/97 | RE/DE | 01/10/00 | 01/03/02 | 24/10/96 | 24/10/96 | 01/02/97 | DE | | |
| IE Ireland | | | | | | | 28/04/00 | 28/04/00 | 01/08/00 | DE | | |
| IS Iceland | | | | | | | 30/05/97 | 30/05/97 | 01/09/97 | DE | | |
| IT Italy | 16/11/89 | 12/02/92 | 01/05/93 | DE | 01/10/00 | 01/03/02 | 29/10/93 | 14/02/97 | 01/06/97 | DE | | |
| LI Liechtenstein | 05/05/89 | 12/07/99 | 01/11/99 | RE/DE | 12/07/99 | 01/03/02 | | | | | | |
| LT Lithuania | 20/02/96 | 27/09/00 | 01/01/01 | DE | 27/09/00 | 01/03/02 | 08/09/98 | 22/06/99 | 01/10/99 | DE | | |
| LU Luxembourg | 05/05/89 | | | | | | 02/10/92 | 21/06/96 | 01/10/96 | DE | 11/05/94 | |
| LV Latvia | 28/11/97 | 26/06/98 | 01/10/98 | RE | 01/10/00 | 01/03/02 | 27/09/93 | 27/09/93 | 01/04/94 | DE | | |
| MD Moldova | 03/11/99 | | | | | | | | | | | |
| MK TFRoMacedonia | 30/05/01 | | | RE | | | 11/04/02 | | | | | |
| MT Malta | 26/11/91 | 21/01/93 | 01/05/93 | DE | 01/10/00 | 01/03/02 | 17/09/01 | 17/09/01 | 01/01/02 | | | |
| NL Netherlands | 05/05/89 | | | | | | 04/07/94 | 24/03/95 | 01/07/95 | DE/TD | | |
| NO Norway | 05/05/89 | 30/07/93 | 01/11/93 | RE/DE | 01/10/00 | 01/03/02 | | | | | 11/05/94 | 19/06/98 |
| PL Poland | 16/11/89 | 07/09/90 | 01/05/93 | DE | 01/10/00 | 01/03/02 | 25/05/99 | | | | | |
| PT Portugal | 16/11/89 | | | | | | 22/07/94 | 13/12/96 | 01/04/97 | RE/DE | | |
| RO Romania | 18/03/97 | | | | | | 24/04/01 | 28/03/02 | 01/07/02 | | | |
| RU Russian Federation | | | | | | | 30/03/94 | 30/03/94 | 01/07/94 | DE | | |
| SE Sweden | 05/05/89 | | | | | | 10/06/93 | 10/06/93 | 01/04/94 | DE | | |
| SI Slovenia | 18/07/96 | 29/07/99 | 01/11/99 | RE/DE | 29/07/99 | 01/03/02 | | | | | | |
| SK Slovakia | 11/09/96 | 20/01/97 | 01/05/97 | RE/DE | 01/10/00 | 01/03/02 | 05/10/93 | 23/01/95 | 01/05/95 | DE | | |
| SM San Marino | 05/05/89 | 31/01/90 | 01/05/93 | | 01/10/00 | 01/03/02 | | | | | 11/05/94 | |
| TR Turkey | 07/09/92 | 21/01/94 | 01/05/94 | | 01/10/00 | 01/03/02 | 10/01/97 | | | | | |
| UA Ukraine | 14/06/96 | | | | | | | | | | | |
| Non Member States | | | | | | | | | | | | |
| BY Belarus | | | | | | | | | | | | |
| IL Israël | | | | | | | | | | | | |
| MA Morocco | | | | | | | | | | | | |
| MC Monaco | | | | | | | | | | | | |
| TN Tunisia | | | | | | | | | | | | |
| VA Holy See | 17/09/92 | 07/01/93 | 01/05/93 | DE | 01/10/00 | 01/03/02 | 10/02/93 | | | | | |
| EC | | | | | | | | | | | 26/06/96 | |

A: Signature - Accession (AC) - Acceptance (AP), B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD) - Objection (O)

NEW MEDIA/TECHNOLOGIES

NL – Dutch Court of Appeal Re-addresses Peer-to-Peer Issue

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In its judgment of 29 November 2001, the District Court of Amsterdam ordered a shut-down of the activities of Kazaa and decided as well that Buma/Stemra (the Dutch music-rights organisation) should continue negotiations with Kazaa over a worldwide streaming-licence for the music of the Buma/Stemra members (see IRIS 2002-1: 13). Following this judgment, both parties involved, Kazaa and Buma/Stemra, decided to take their case to a higher court.

The President of the District Court had ruled that Kazaa had violated the Dutch Copyright Act by enabling its users to download music with the aid of Kazaa soft-

Gerechthof Amsterdam, 28 maart 2002, LJN-nummer: AE 0805, Zaaknr: 1370/01 SKG (Decision of the Court of Appeal of Amsterdam of 28 March 2002), available at: http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=32573

NL

ware. By offering its peer-to-peer software together with a search-engine, Kazaa was considered to be a user of the music that had been downloaded.

This point of view was not shared by the Court of Appeal of Amsterdam, which stated in its judgment of 28 March 2002 that insofar as there were any relevant acts of copyright infringement in this case, those acts were performed by the users of the software themselves and not by Kazaa, as such. The mere provision of means for publication or multiplication of copyright-protected works is not in itself an act of publication or multiplication.

Furthermore, it is not only copyright-protected works that are shared with the help of the Kazaa software, but also works that are in the public domain and works for which the author's permission has been given to use them. The provision by Kazaa of relevant software cannot therefore be considered unlawful.

Kazaa also appealed on the grounds that it is unable to take appropriate measures to prevent its users from sharing copyright-protected works. It has shut down its website, as ordered by the District Court, but stated that it cannot stop the acts of infringement. The Court of Appeal accepted the correctness of this statement and ruled that the counterclaim by Buma/Stemra could not therefore be allowed.

Kazaa, to conclude, withdrew the request for an order to continue the negotiations, which it had originally been granted by the District Court of Amsterdam. ■

RELATED FIELDS OF LAW

DE – Ruling on Geographical Division of Satellite Broadcasting Rights

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In a recently published ruling, the *Landgericht Stuttgart* (Stuttgart District Court - *LG Stuttgart*) decided that Europe-wide satellite broadcasting of a film, whereby exploitation rights were transferred without time restrictions but were limited geographically to German-speaking areas, was not subject to the regulations set out in Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, provided the film was broadcast before the Directive was transposed into German law.

In the proceedings, the plaintiff requested that the defendant be prohibited from broadcasting a film via satellite in Europe without prior consent. The plaintiff was the co-producer of the film concerned and, through a co-production agreement signed in 1987, had granted to her partner the exploitation rights for the retransmission of the film via satellite and cable for an unlimited period of time. However, the agreement restricted the rights geographically to German-speaking areas only.

Ruling of the *Landgericht Stuttgart* (Stuttgart District Court), case no. 17 O 334/01

DE

In 2001, the plaintiff's partner then sold the rights to broadcast the film to the defendant. The defendant is a programme provider which broadcasts via the Astra 1 C satellite broadcasting system and whose programmes are therefore accessible to anyone with a satellite receiver anywhere in Europe.

The Stuttgart District Court ruled that, according to the "broadcasting country principle", which has applied since the Directive on satellite and cable retransmission was transposed into German law (see Art. 20a of the *Gesetz über das Urheberrecht und verwandte Schutzrechte* - Act on Copyright and Related Rights - *UrhG*), the complete transfer of exploitation rights, even with geographical restrictions, includes transfrontier broadcasting via satellite. Nonetheless, the Court held that the plaintiff's prior consent should be obtained because Art. 137h para.2 of the *UrhG* applied to the co-production agreement in question. Under this provision, if a co-production contract concluded before 1 June 1998 makes provision for a geographical division of exploitation rights without distinction between satellite broadcasts and other kinds of broadcast, and if the broadcast by satellite of the film would prejudice exploitation of the exclusive rights of another producer in a given language, the broadcast shall be permissible only with the consent of the holder of these exclusive rights. ■

DE – New Copyright Act and Future Law on Private Copying

On 20 March 2002, the *Bundesministerium für Justiz* (Federal Ministry of Justice) published a draft new *Urheberrechtsgesetz* (Copyright Act - *UrhG-E*). The proposed Act, entitled *Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft* (Act regulating copyright in the information society), would ensure that Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain

aspects of copyright and related rights in the information society was transposed into German law before the December 2002 deadline.

The new Act will, amongst other things, provide authors with the right to make their works available to the public (Art. 19a) and allow people with a disability to convert works into a different form (Art. 45a).

However, the most important changes concern the relationship between technological measures designed to prevent illegal copying and individual exceptions, particularly the right to reproduce works for private use. This right, which is recognised in the draft Act and even

extended to "any" (i.e., analogue or digital) medium (Art. 53.1), must be viewed in conjunction with Art. 95a of the *UrhG-E*, which prohibits the circumvention of technical measures whose normal purpose is to prevent works or other protected material from being exploited without the author's consent. This includes all anti-copying devices and Digital Rights Management (DRM) systems. Art. 95b, which is also new, regulates exceptions and limitations, although the right to private copying is not mentioned. On the other hand, the provisions on sanctions (see Art. 108b para.1) give immunity from prosecution to people who, for example, circumvent a technological measure in the sense of Art. 95a purely for

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Proposal for a Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft (Act regulating copyright in the Information Society) (version of 18.3.2002), available on the Internet at:

http://www.urheberrecht.org/topic/MultiMediaRili/RefEntw_infoges_18_3_02.pdf

DE

DE – Rules for DVB-T Frequency Allocation Published

On 4 April 2002, the *Regulierungsbehörde für Telekommunikation und Post* (Regulatory Authority for Telecommunications and Post - *RegTP*) published the main principles that will govern the allocation of frequencies when digital terrestrial television (DVB-T) is introduced.

According to the guidelines, the basic process for allocating frequencies consists of an invitation for tender preceded by an application procedure. The guidelines,

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Main principles for the allocation of frequencies for digital terrestrial broadcasting, particularly TV broadcasting, and for media services and tele-services (digital terrestrial television, DVB-T); available at: <http://www.regtp.de/imperia/md/content/aktuelles/eckpunkte-dvb-t.pdf>

DE

DE – ORB Need Not Pay Deutsche Telekom Fee

In a ruling of 20 March 2002, the *Oberlandesgericht Brandenburg* (Brandenburg Appeal Court - *OLG Brandenburg*) decided that *Deutsche Telekom*, as cable network operator for the public broadcaster *Ostdeutscher Rundfunk Brandenburg (ORB)*, is not entitled to charge a fee for carrying *ORB's* programmes. The court of second instance rejected *Deutsche Telekom's* claim to a monthly fee of EUR 51,000 for feeding *ORB* into its cable network. However, the *OLG Brandenburg* recognised the fundamental importance of the case and granted leave to appeal against its ruling. So far, *Deutsche Telekom* has not taken up the opportunity to bring its case to the *Bundesgerichtshof* (Federal Supreme Court).

Deutsche Telekom had based its claim for payment on a decision of the *Regulierungsbehörde für Telekommuni-*

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Ruling of the Oberlandesgericht Brandenburg (Brandenburg Appeal Court) of 20 March 2002 (case no. 7 U 27/01) and decision of the Regulierungsbehörde für Telekommunikation und Post (Regulatory Authority for Telecommunications and Post - RegTP) of 24 March 1999 (case no. BK 3b 99/001)

DE

GB – Budget Measures Affect Audiovisual Industries

The recent United Kingdom Budget contained two specific measures of relevance for the audiovisual industries.

private purposes.

In addition to the draft new Copyright Act, there has been a significant development regarding the future of the right to private copying. This marks the start of a new phase in the dispute between collecting companies and the equipment industry over reasonable compensation. In a test case brought before the *Landgericht Stuttgart* (Stuttgart District Court) in June 2001, equipment manufacturer *Hewlett Packard (HP)* was obliged, *inter alia*, to agree a reasonable rate of compensation with the collecting companies. As a result, the Federal Minister for Justice chaired negotiations between the equipment industry union, *BITKOM*, and the collecting companies. However, the talks broke down at the beginning of March 2002 after *BITKOM* rejected the proposal for a flat-rate tax, preferring individual compensation models based on new technological advances. The collecting company *GEMA* (company for musical performance and mechanical reproduction rights), which deals with the tax on CD burners, has now announced that it will instigate further proceedings against *HP* if it does not agree to pay a levy of EUR 10 for every device sold. Furthermore, the collecting companies are now demanding that the legislature clarify the issue in the proposed new Copyright Act. ■

which are based on the second half of Art. 47.5.2 in conjunction with Arts. 11.1, 11.6, 10 and 73.3 of the *Telekommunikationsgesetz* (Telecommunications Act), lay down the conditions for the tender process.

The *RegTP* believes this two-stage allocation process is necessary because, due to the different procedures relating to the various types of service, the number of applications may exceed the number of available frequencies. If this were the case, DVB-T frequencies would have to be allocated via a tender process. The different types of service are to be defined by the *Bundesländer*.

These main principles form the basic telecommunications law framework for DVB-T. The *Bundesländer* are now in a position to draw up the conditions for the gradual, conurbation-based transition to digital television. ■

nikation und Post (Regulatory Authority for Telecommunications and Post - *RegTP*) of 24 March 1999, according to which it was not required to carry local terrestrial channels on its network free of charge. This decision had been taken because *Deutsche Telekom*, by charging different prices for admitting different channels, had breached the ban on discrimination enshrined in Art. 24.2.3 of the *Telekommunikationsgesetz* (Telecommunications Act - *TKG*). The *RegTP* had therefore demanded that it abolish this discriminatory pricing structure. However, the regulatory authority's decision was contested by *ORB* amongst others, and does not yet have legal force.

In any case, the *OLG Brandenburg* ruled that the *RegTP's* decision gave no adequate justification for the admission fees being demanded by *Deutsche Telekom*. The demand for equal treatment contained in the decision did not necessarily mean that *Telekom* had to charge any fees at all. Rather, the court thought that the cost of feeding in channels could just as easily be included in the connection fee charged to individual households, thus removing the admission fees altogether. ■

One introduces a new tax relief for the costs of intellectual property (amongst other intangible assets), which is being introduced from 1 April.

The Treasury announced this on 26 March, prior to the Chancellor of the Exchequer's [the functional equivalent

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deeJgee
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for a British Minister of Finance] Budget speech: "new relief for the cost of intangible assets (including intel-

"Chapter A: Budget policy decisions", Budget of April 2002, HM [Her Majesty's] Treasury, available at:
http://www.hm-treasury.gov.uk/Budget/bud_bud02/budget_report/bud_bud02_repchapa.cfm?
"Chancellor confirms tax measures for business", HM Treasury Press Release of 26 March 2002, available at:
http://www.hm-treasury.gov.uk/Newsroom_and_Speeches/Press/2002/press_26_02.cfm?

IE – Advertising Standards Authority for Ireland Issues New Codes

The Advertising Standards Authority for Ireland (ASAI) is an independent self-regulatory body set up and financed by the advertising industry. Although the amount of legislation governing advertising in Ireland is increasing, advertising remains largely self-regulatory. The ASAI publishes two Codes, which are updated regularly.

The Codes cover commercial advertisements: these are characterised as where the advertiser pays or compensates a third party to communicate the commercial message. It covers advertising that has a "paid for" space in the media, which now includes the Internet. In line with the rules applying to traditional media, the editorial or self-advertising content of websites is not covered. In other words, the Codes do not in general cover the content of websites other than advertisements in "paid-for" space within the website. The same principles

lectual property and goodwill) will encourage business to take advantage of new opportunities in the knowledge-based economy. Up to 30,000 businesses stand to benefit from the measure."

The second measure concerns film tax relief. Specifically, it is stated in the Budget Policy Decisions that "Film tax reliefs for British qualifying films are to be restricted to films intended for the theatrical release at the commercial cinema. Subject to discussion with the industry on the details of implementation, films completed on or after 17 April 2002 that do not meet the criterion will not be eligible for relief. Those completed before 1 January 2002, but not certified as British qualifying by the Department of Culture, Media and Sport before 17 April 2002, will also not be eligible for relief." ■

apply to sales promotions.

The most recent editions of the Codes, which are the Code of Advertising Standards for Ireland (5th edition) and the Code of Sales Promotion Practice (3rd edition), were published in 2001 and came into force on 1 April 2002. Among the changes introduced by the new Codes are: the tightening of rules on the quoting of prices to make total costs clearer and to avoid exaggerating the availability of products and services; a strengthening of the rules relating to advertising and children, even where the advertising is not directed at children, particularly the rules on alcohol advertising; clarification that sales promotion and advertising on the Internet are covered by the Codes; point-of-sale advertising will now be covered by the Codes when it is part of a wider advertising campaign or part of a sales promotion; advertisers must have signed and dated proof of any testimonials, trials, etc., relied upon to support their advertising claims. The rules on Environmental Claims have also been strengthened.

The rules on offensiveness in advertising have been broadened to include the categories of persons protected by the Equal Status Act, 2000 (*i.e.*, gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller Community). Advertisers are thus encouraged to be responsive to the diversity in Irish society. ■

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Full texts of the Code of Advertising Standards for Ireland (5th edition) and the Code of Sales Promotion Practice (3rd edition) are available at: <http://www.asai.ie>; precise details of the most recent changes to the Codes are available at: <http://www.asai.ie/news.tmpl>

DE

IE – Effect of New Languages Bill on Public Service Broadcasters

The Irish Government recently published its long-awaited *Bille na dTeangacha Oifigiúla (Comhionannas)* (Official Languages (Equality) Bill), 2002. The primary objectives of the Bill include the promotion of respect for Irish and English as the official languages of the State; the promotion of equality of status and equal rights and privileges as to their use, especially in parliamentary proceedings, legislation, the administration of justice, in communicating with or providing services to the public and in discharging the functions of public bodies.

For the purposes of the Bill, the main national public service broadcaster *Radio Telefís Éireann* (RTÉ) qualifies as a public body. So too does the exclusively Irish-language radio station, *Raidió na Gaeltachta*, as does the principally Irish-language television station referred to in the Bill as *Teilifís na Gaeilge* (now actually known as TG4).

If enacted, the greatest impact of the Bill on the aforementioned public service broadcasters will concern RTÉ, as the other two routinely conduct their business through the medium of the Irish language anyway. Its impact will, however, be mainly in administrative terms, as broadcasting in the Irish language by RTÉ is the sub-

ject of specific provisions in the Broadcasting Act, 2001 (see IRIS 2001-4: 9). Section 28(2) of the Act, for instance, obliges the public broadcaster, *inter alia*, to "provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include, both on television and radio [...]."

By way of contrast, the present Bill focuses instead on measures aimed at increasing the use of the official languages in the day-to-day operations of public bodies, for example by making certain documents of public interest (eg. policy proposals or annual reports) available simultaneously in both languages (Section 11). The Bill also envisages a duty for public bodies to ensure that members of the public can communicate with them and receive services from them in either of the official languages (Section 9).

Article 8 of *Bunreacht na hÉireann* (Constitution of Ireland), 1937, stipulates that the "Irish language as the national language is the first official language". It also states that the "English language is recognised as a second official language" and that provision "may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof." According to the most recent census information available (1996), only 43% of the population consider themselves able to speak Irish and over two-thirds of these persons are school-goers. ■

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Bille na dTeangacha Oifigiúla (Comhionannas), 2002 (Official Languages (Equality) Bill, 2002), No. 24 of 2002, April 2002, available at: <http://www.gov.ie/bills28/bills/2002/2402/default.htm>

EN-GA

NL – Actor Allowed to Appear in Rival Broadcasting Company's Television Series

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Amsterdam

In a legal action between the broadcasting company, *RTL/De Holland Media Groep S.A.* (RTL/HMG), on one side and a Dutch actor and the production company, *Endemol*, on the other, the District Court of Amsterdam ruled on 11 April 2002 that an actor, contractually bound to RTL/HMG, was not in breach of contract for starring in a drama series of a rival television station. Additionally, the Court found that *Endemol*, the producer of the series, had not acted unlawfully towards RTL/HMG by creating a series featuring the actor in question.

Two contracts existed between RTL/HMG and the actor: one contract from 1995 to 1999 and a new contract from 1999 to the present. In the contract for 1995-1999, exclusivity for the performances of the actor, which con-

Rechtbank Amsterdam, 11 april 2002, LJN-nummer: AE 1364, Zaaknr: KG 02/634 OdC (Decision of the District Court of Amsterdam of 11 April 2002), available at: http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=33007

NL

sisted of acting in television series and presenting game shows, was stated to be in favour of RTL/HMG. In exchange for this exclusivity, the actor would be paid a sum of 120,000 Euro every year, and this payment would also be made regardless of whether or not RTL/HMG actually required the actor to act in a series or present a game show.

In the new contract, changes were made with regard to the exclusivity clause: it was retained for presenting game shows, but as for acting in television series, RTL/HMG and the actor himself agreed that the actor should, in principle, be free to act in other drama series. The only restriction made was that the actor, by appearing in another series, should not damage the interests of RTL/HMG.

RTL/HMG submitted that participation by the actor in a series produced by another company could damage their interests as he represented significant goodwill and related commercial income, which would be lost if he were to appear in a series of a rival company.

The District Court rejected this argument and stated that it was not likely that the actor, by starring in a television series of another station, would cause any loss of goodwill for RTL/HMG. It could equally be said, the Court held, that the actor's popularity would benefit from the appearances in the television series, which would reflect positively on RTL/HMG. ■

LT – Threat to the Independent Mass Media in Lithuania?

Viktoras Popandopula
The Radio and
Television
Commission of
Lithuania

During the last few months, amendments to the Law on Telecommunications are being prepared in Lithuania under the authority of the Ministry of Communications. According to official statements, the changes will liberalise the telecommunications field. The Draft Law would, however, impose additional licence requirements on broadcasters for their use of telecommunications services. These licences would be issued either by the Government itself, or by a state-authorized institution.

Up to now the Law on the Provision of Information to the Public, adopted in 1996 (hereinafter "the 1996 Law", sets out the basic rules for the regulation of the audio-

Law Amending the Law on Telecommunications of the Republic of Lithuania

EN

visual sector. It ensures a regulatory system for radio and television broadcasters independent from the executive powers. Under the 1996 Law, the activities of broadcasters are licensed and supervised by an independent body directly accountable to the Parliament, namely the Radio and Television Commission of Lithuania. The 1996 Law was brought into line with EC norms in 2000 and now contains rules for the licensing of radio and television broadcasters and allows the allocation of state resources by way of tender. The 1996 Law also incorporates the EC law requirements for the audiovisual sector, regulating advertising, promoting European audiovisual works, and granting the right of reply. As a result, Chapter 20 of the negotiations with the EU "Culture and Audiovisual Policy" were completed and Lithuania was given access to the EU audiovisual sector support programme *MEDIA PLUS*, as well as to the culture support programme "Culture 2000". ■

RO – Public Procurement Rules Adopted

Mariana Stoican
Radio Romania
International

The *Ministerul Comunicațiilor și Tehnologiei Informațiilor* (Romanian Ministry for Communication and Information Technology - *MCTI*) is hoping that liberalisation of the communications market will be complete by 1 January 2003.

The set of new laws that has been drafted for this purpose, and which is still at the planning stage, is intended to take into account all relevant EC directives. It will include provisions concerning electronic services and "e-procurement".

At the beginning of March 2002, Government Decree 20/2002 on public procurement via electronic auctions entered into force. The Decree requires certain public institutions in Romania to conduct all their procurement activities "online" from now on. The list of public institutions to whom this applies was published in Government Resolution 182/2002.

Government Resolution 182/2002, available at: http://www.e-licitatie.ro/HGlista_autoritati_si_produceSEAP.doc

RO

At present, there are 159 such publicly-funded institutions. Those classified as cities or municipalities have nine months, and smaller towns have twelve months, in which to switch over to e-procurement for transactions worth EUR 200,000 or less. National prices are to be introduced for certain items. The provisional list of products contains seven categories of goods that are in particular demand, ranging from agricultural products such as fruit, milk and eggs, to textiles, paper and cellulose products, medicines and electronic components.

The legislature hopes that the automated selection, audit and control procedure will create greater transparency at government level, reduce bureaucracy and corruption and, not least, save money.

The *MCTI* will ensure that council offices are equipped with the new technology and that staff are trained by the date indicated. The new laws also describe the main features of an electronic system to be used in the future to levy taxes and charges. Such a system should be available 24 hours a day, 7 days a week. Via an Internet portal, the Treasury will have to inform all interested taxpayers about taxes, which they will also be able to pay electronically. By registering as an interested user, all Romanian taxpayers should be able to use this system. ■

RU – Statute on Martial Law and Freedom of Information

On 2 February 2002, the Federal Constitutional Statute on Martial Law entered into force in Russia. The necessity for the federal law was stated in the 1993 Constitution of the Russian Federation.

In the case of a proclamation of martial law, human rights and freedoms may be restricted. According to the Statute, the rule of martial law has territorial limits. The rule of martial law may spread over the whole territory of the Russian Federation or be confined to certain parts. Within these geographical limits, some measures, that concern *inter alia* the mass media and the dissemination of information, may apply.

Natalie
Boudarina
Moscow Media
Law and Policy
Center

Federalnyi Konstitutsionnyi zakon Rossiyskoy Federatsii "O voennom polozenii" (Federal Constitutional Statute on Martial Law) was published in Rossiyskaya gazeta official daily, on 2 February 2002, available at: http://www.rg.ru/oficial/doc/fed_konst_zak/1-fkz.shtml

RU

The following measures may be taken exclusively on that territory where the rule of martial law is proclaimed: control of the activity of mass media organisations, printing houses, communication providers, and use of their facilities for the needs of defence. Furthermore, the Statute provides for establishing military censorship of correspondence, as well as surveillance of telephone conversations. Additional measures may be introduced in order to strengthen the secrecy of state authorities and local self-government bodies, though court proceedings shall remain public.

Even if the rule of martial law applies only to a part of the territory of the Russian Federation, temporary restrictions of the right to seek, receive, and impart information may be enforced on the whole of its territory.

The President of the Russian Federation may proclaim martial law by Decree in case of aggression or a direct threat of aggression against the Russian Federation. The Federation Council, the upper chamber of the national parliament, shall approve the Decree. ■

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