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INTERNATIONAL

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European Court of Human Rights: Case of Nikula v. Finland

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In 1996, Anne Nikula, a lawyer living in Helsinki, lodged an application against Finland with the European Court of Human Rights, alleging that her freedom of expression had been violated by her conviction for defamation for having criticised the public prosecutor in her own capacity as defence counsel. In a memorial which the applicant read out before the court, the public prosecutor, Mr. T., was criticised for "role manipulation and unlawful presentation of evidence". After a private prosecution was initiated by Mr. T., Nikula was convicted in 1994 of public defamation committed without better knowledge. The Supreme Court upheld the criminal conviction in 1996, but restricted the sanction to the payment of damages and costs only.

In its judgment of 21 March 2002, the European Court of Human Rights reiterated that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and

the courts. Given the key role of lawyers in this field, it is legitimate to expect them to maintain public confidence in the administration of justice. However, the Court referred as well to the possibility that an interference with the counsel's freedom of expression in the course of a trial could raise an issue under Article 6 of the Convention with regard to the right of an accused client to receive a fair trial. According to the Court, the "equality of arms" principle and more generally, the principle of a fair trial, militate in favour of free and even forceful argumentation between the parties, although this should not lead to unlimited freedom of expression for a defence counsel.

In evaluating the legitimacy of the applicant's conviction, the Court - referring to the Interights *Amicus Curiae* report - reiterated the distinction between the role of the prosecutor as the opponent of the accused, and that of the judge. This should provide increased protection for statements whereby an accused person criticises a prosecutor, as opposed to verbally attacking the judge or the court as a whole. The Court also noted that the applicant's submissions were confined to the courtroom, as opposed to criticism of a judge or prosecutor voiced in the media. More substantially, the Court underlined that the threat of an *ex post facto* review of a counsel's criticism of the public prosecutor is difficult to reconcile with defence counsels' duty to defend their clients' interests zealously. The assessment of a defence argument should not be influenced by the potential chilling effect of a criminal sanction or an obligation to pay compensation for harm suffered or costs incurred. According to the Court, it is only in exceptional cases that a restriction - even by way of a lenient criminal sanction - of a defence counsel's freedom of expression can be accepted as necessary in a democratic society. In the Court's view, such reasons were not shown to exist in the Nikula case. Therefore, the restriction on Ms. Nikula's freedom of expression failed to answer any pressing social need. The Court held, by five votes to two, that there had been a violation of Article 10 of the Convention. ■

Judgment by the European Court of Human Rights (Fourth Section), Case of Nikula v. Finland, Application no. 31611/96 of 21 March 2002, available at: <http://www.echr.coe.int>; *Amicus Curiae* brief submitted to the European Court of Human Rights by Interights, the International Centre for the Legal Protection of Human Rights, pursuant to Rule 61 of the Rules of the Court, available at: <http://www.interights.org/news/Nikula%20brief.asp>

EN

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Committee of Ministers: Media Provisions of Recommendation on Protection of Women against Violence

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The Committee of Ministers of the Council of Europe adopted a Recommendation on the protection of women against violence on 30 April 2002. The Recommendation contains an array of general measures concerning violence against women, as well as more specific measures on: intervention programmes for the perpetrators of violence; sexual violence; violence within the family; sexual harassment; genital mutilation; violence in conflict and post-conflict situations; violence in institutional environments; failure to respect freedom of choice with

Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, 30 April 2002, available at:
http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r5.htm

EN-FR

Standing Committee on Transfrontier Television: Opinion on Split-screen Advertising

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Following lengthy discussions within the Council of Europe's Standing Committee on Transfrontier Television during the past two years, an opinion on split-screen advertising (simultaneous transmission of a programme and television advertising) was adopted by the Committee on 29 April 2002, acknowledging that this practice

Opinion No. 9 (2002) on Split-screen Advertising (adopted by the Standing Committee at its 30th Meeting (29-30 April 2002)), available at:
[http://www.humanrights.coe.int/media/topics/broadcasting/transfrontier/TTInfo\(A\).rff](http://www.humanrights.coe.int/media/topics/broadcasting/transfrontier/TTInfo(A).rff)

EN-FR

Group of Specialists: Draft Declaration on Freedom of Communication on the Internet

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On 8 April 2002, the Group of Specialists on On-line Services and Democracy, working under the auspices of the Council of Europe, released the first public version of a draft Declaration on freedom of communication on the Internet. The principal motivation for the elaboration of the draft Declaration was to guarantee freedom of expression and information on the new information and communication services. Other reasons can be found in the preamble to the draft Declaration.

The draft Declaration consists of the following principles:

Prior control should not be exercised by public authorities or by intermediaries, such as service providers. The denial of access by the public to information and other

Draft Declaration on freedom of communication on the Internet (Public version No. 1), Group of Specialists on On-line Services and Democracy (MM-5-OD), Council of Europe, 8 April 2002, available at:
<http://www.humanrights.coe.int/media/documents/Draftdeclaration.rtf>

EN-FR

Comments submitted by interested organisations or persons on the draft Declaration on freedom of communication on the Internet, Secretariat memorandum prepared by the Directorate General of Human Rights, 7 May 2002, Doc. No. MM-5-OD (2002)7, available at:
[http://www.humanrights.coe.int/media/documents/CommentsondraftDeclaration\(E\).rff](http://www.humanrights.coe.int/media/documents/CommentsondraftDeclaration(E).rff)
Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector, 20 December 2000, available at:
<http://cm.coe.int/ta/rec/2000/2000r23.htm>

EN-FR

regard to reproduction; killings in the name of honour and early marriages.

The section setting forth the general measures contains distinct focuses on a number of diverse issues, including the media. In this connection, Member States are urged to pursue four objectives. Firstly, they should "encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex"; these criteria should be applied in the traditional media and new information technologies alike (para. 17).

Member States should also encourage the media to engage in awareness-raising concerning violence against women (para. 18). Furthermore, efforts ought to be made to promote the training of media professionals, with a view to explaining to them and sensitising them to the possible impact of programmes associating violence and sex on certain members of the public (para. 19).

Finally, the Recommendation calls on Member States to "encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women and, in the terms of reference of media watch organisations, existing or to be established, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism" (para. 20). ■

was a form of advertising covered by the Convention, under the term "other forms of advertising" employed in the Convention.

In its opinion, the Standing Committee does not enter into details on what conditions or criteria such advertisements should meet, for example the maximum size of the advertising window, but simply says that this practice is only acceptable if it complies with all the advertising provisions of the Convention, including the need to ensure a clear and recognisable separation of programming and advertising content (Article 13) and the need to respect time constraints (Article 12). ■

communications on the Internet through technical measures such as filtering should be prohibited. Furthermore, under the draft Declaration, Member States would be obliged to promote and encourage access for all Internet services on a non-discriminatory basis at an affordable price. Besides that, States should seek methods for enhancing a pluralistic offer of services, mainly by preventing monopolistic tendencies in this regard.

Additionally, Member States should respect the right of Internet users to anonymity, although an exception is provided for States to take measures to make possible the locating of authors of criminal deeds.

Guidelines for making rules concerning liability for the content of Internet communications are given, especially with regard to service providers, who should not be held liable for providing access, transmitting or hosting in good faith. Finally, any regulatory bodies in the field of Internet should act in accordance with the terms of Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector.

Comments and recommendations on the draft Declaration were made by several organisations and individuals as part of a public consultation exercise on the draft text. On 17 May 2002, the Steering Committee on the Mass Media decided to refer the declaration back to the expert committee which is responsible for its drafting. ■

EUROPEAN UNION

Council of European Union: Rules for Taxation of Electronic Services

On 7 May 2002, the Council of the European Union updated the existing rules on taxation of e-commerce services and adopted two new regulations on the application of value added taxes (VAT) on services that are delivered over electronic networks, including e-commerce services, commercial radio and broadcasting services (e.g. pay-per-view, Pay-TV and other subscription-based services) as well as other electronically supplied services: Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services and Council Regulation (EC) No. 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) No. 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce.

The goal of the amendments is to remove anti-competitive disadvantages for suppliers of electronic services within and outside the European Union. The existing system caused distortions in competition, as the existing VAT regime would tax electronic services irrespective of the place of consumption. As a consequence, services originating within the EU would be subject to taxes, even if the service itself were consumed outside the EU. *Vice versa*, services from outside the EU were not taxed even when delivered to consumers within the EU. The new framework translates the principles that were agreed within the international framework of the Organisation for Economic Co-operation and Development (OECD), and that established that electronically delivered services should be taxed in

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Council Regulation (EC) No. 792/2002 of 7 May 2002 amending temporarily Regulation (EEC) No 218/92 on administrative co-operation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce, Official Journal of the European Communities L 128/1, 15 May 2002
Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, Official Journal of the European Communities L 128/41, 15 May 2002, both available at:
http://europa.eu.int/eur-lex/en/oj/2002/L_12820020515en.html

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

Council of the European Union: Debate on Directive "Television without Frontiers"

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On 23 May 2002, the Council of the European Union held a debate on Directive 89/552/EEC "Television without Frontiers", which is to be reviewed by the end of 2002.

For the revision of the Directive, the European Commission had envisaged three different options:

2427th Council meeting - Culture/Audiovisual Affairs - Brussels, 23 May 2002 8846/02 (Presse 140), available at: <http://ue.eu.int/newsroom/LoadDoc.asp?DID=70787&LANG=1>

EN-FR-ES

European Commission: Adoption of Proposal to Combat Cybercrime

The European Commission recently adopted a Proposal for a Council Framework Decision on attacks against information systems. The objective of the proposed Framework Decision is the improvement of "co-operation between judicial and other competent authorities,

the jurisdiction where the consumption takes place.

The amendments concern, in the first place, the taxation of Business to Consumer (B2C) transactions, i.e., electronic services that are supplied to private consumers. According to the new framework, electronic services consumed by customers established in the EU are taxed in the EU and are not taxed if consumed outside the Internal Market. For service providers from outside the EU, this means that for the first time, they will have to charge VAT on electronic services that are provided to private consumers. They shall do so in the framework of a so-called "Special scheme for electronically supplied services" (Article 1, Section B of Directive 2002/38). Non-EU suppliers are required to register with a national tax authority in a Member State of their choice ("Member State of identification"). In the course of the registration process, service providers have to provide identification information such as the name, postal address, electronic address, including websites, national tax numbers and a statement that the person is not identified for value added tax purposes within the EU. Registered non-EU suppliers shall submit to the national tax authority a value added tax return (in Euros) for each calendar quarter (irrespective of whether or not electronic services have been supplied), together with the information on the State in which the tax has become due (i.e., where the service has been actually consumed - "Member State of consumption"), the total value, less value added tax, the total amount of the corresponding tax, the applicable tax rates, etc. Apart from that, non-EU service providers must keep records of the electronic transactions for a period of 10 years, in order to enable the national tax administration of the Member State of consumption to determine whether the value of tax return is correct. The State of identification will then re-allocate the VAT revenue to the State of consumption. All communications and transactions between the non-EU supplier, the State of consumption and the State of identification shall be made electronically. Member States are required to ensure that the necessary communication and information exchange systems are operational on 1 July 2003. On this date, the laws, regulations and administrative provisions that are necessary to comply with the new regulations must also enter into force.

The provisions on the special schedule shall apply for a temporary period of three years, starting from 1 July 2003, that may be extended and should be reviewed, on the basis of practical experience, within three years of the same date. On the other hand, the provisions and measures concerning the introduction of electronic tax returns and statements should be adopted on a permanent basis. ■

- a radical amendment of the Directive immediately,
- a "fine-tuning" of the current Directive, or
- a work programme to prepare a proposal at a later date.

During the Council meeting, the Commission stated that most interested parties which it had consulted had preferred to establish a work programme with a view to amending the Directive at a later stage. The Council expressed its support for this approach and stated that it would come back to this dossier at one of its forthcoming meetings. ■

including the police and other specialised law enforcement services of the Member States, through approximating rules on criminal law in the Member States in the area of attacks against information systems" (Article 1).

Among the offences contemplated by the proposed Framework Decision are attacks through illegal access to Information Systems ("hacking"); through illegal interference with Information Systems (viruses and other

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means of hindering or interrupting the operation of an Information System by tampering with computer data) and instigating, aiding, abetting or attempting either type of attack. Information Systems are defined in Article 2 as: "computers and electronic communication networks, as well as computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance". This definition aspires to technological neutrality; concerns both hard- and software (but not the actual content of

Proposal for a Council Framework Decision on attacks against information systems (& Explanatory Memorandum), Commission of the European Communities, 19 April 2002, Doc. No. COM(2002) 173 final, available at: <http://europa.eu.int/cgi-bin/eur-lex/udl.pl>

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

European Commission: Approval for State Funding to BBC Digital TV and Radio

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The funding of the BBC's nine new digital television and radio channels through revenue generated by television licence fees was approved by the European Commission in its recent decision that the funding in question does not involve State aid, within the meaning of Article 87(1) of the EC Treaty.

Article 87(1) reads: "Save as otherwise provided in this

"Commission approves state funding to BBC digital television and radio channels", Press Release of the European Commission of 22 May 2002, IP/02/737, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/737101RAPID&lg=EN&display=

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

European Commission: TF1 Allowed to Increase Shares in Télévision Par Satellite

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The European Commission has decided to allow the purchase by the French television channel *TF1* of the shares in the digital package of satellite television channels *Télévision Par Satellite (TPS)* held by *France Télévision* and *France Télécom*. This operation will not result in the creation or strengthening of a dominant position on the relevant markets (pay-TV, marketing of special-interest channels, acquisition of broadcasting rights) or any danger of coordinated anti-competitive measures.

The proposed transaction involves 25% of the capital of *TPS* and since *TF1* already has a 25% share in *TPS*, *TF1* will now own 50% of the capital of *TPS*. Be that as it may,

"Commission authorises the purchase by TF1 of 25% of the capital of TPS, currently held by France Télévision and France Télécom", Press Release of the European Commission of 2 May 2002, IP/02/645, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/645101RAPID&lg=EN&display

DE-EN-ES-FR-IT

European Commission: Approval for Spanish Aid to Cinema

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A draft aid scheme proposed by the Spanish Government for the cinema sector was recently approved by the European Commission. The aid envisaged under the draft scheme is worth approximately EUR 41.4 million *per annum* and will be administered by the *Instituto de la Cinematografía y de las Artes Audiovisuales* (the Spanish Institute for Film and Audiovisual Arts - ICAA), the activities of which are regulated by Act 15/2001 on the Promotion of the Film Industry and the Audiovisual Sector

the information) and applies to both interconnected and stand-alone computer systems.

While conscious of the need to develop a common approach to the offences in question, the proposed Framework Decision is also wary of the dangers of what may be termed "over-criminalisation", especially as regards minor or trivial offences. The Proposal also dwells on pertinent topics such as penalties, aggravating and particular circumstances, as well as jurisdictional matters.

The drafters of the Proposal have taken due cognisance of relevant developments at the international level. For instance, the Council of Europe's Convention on Cyber-crime was formally adopted and opened for signature at the end of last year (see IRIS 2001-10: 3) and the First Additional Protocol to the Convention, dealing with the criminalisation of acts of a racist or xenophobic nature committed through computer systems, is currently being drafted (see IRIS 2002-3: 3). The G8 is also actively examining transnational cooperation relating to high-tech crime. ■

Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market."

The Commission took the view that this funding had not given the BBC any real competitive advantage over other broadcasters or programme-makers. In reaching its decision, the Commission also gave due consideration to the public service mission of the BBC, which the new channels will have to serve, as well as the fact that the amount of the funding is not disproportionate to the net running costs of the new channels (an estimated GBP 90 million). ■

given the joint strategy accomplished within *TPS* by *M6* and *Suez*, each of which own 25% of the capital, *TF1* will now have joint control of *TPS*, together with *M6/Suez*.

The removal of *France Télévision* and *France Télécom* will basically cause *TPS* and its parent companies to have a weaker combined position than before. The position of *TPS* will decrease in proportion to the market shares held by *France Télévision* or *France Télécom* on the markets in question. *France Télévision* is present on the upstream market which consists of the marketing and operation of special-interest channels and the purchase of broadcasting rights. The downstream market is the pay-TV market, in which *France Télécom* is active as a cable television operator.

The examination has also shown that no danger of integration of the parent companies' management as a result of *TF1*'s and *M6/Suez*'s gaining of joint control could be demonstrated regarding the related upstream markets on which they compete. ■

(see IRIS 2001-8: 13).

A number of determinative considerations led to the Commission's decision to approve the proposed aid scheme. First, the provisions of the proposed scheme respect key principles of the European Union, such as non-discrimination on the basis of nationality; freedom of establishment and the free movement of goods and services. Moreover, it is also consistent with the criteria for the compatibility of State aid for cinema and television production with EU law, as set out in the Commission's Communication of 26 September 2001 on certain legal aspects relating to cinematographic and other

"Commission approves Spanish scheme of aid to cinema production", Press Release of the European Commission of 9 April 2002, IP/02/529, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/529101RAPID&lg=EN&display=

DE-EN-ES-FR

European Commission: Eight Candidate Countries to Join MEDIA Programme

The European Commission has taken a series of decisions in order to facilitate the participation of eight candidate countries in the MEDIA Programme (2001-2005). As a result, beginning this year, or else in 2003, cinema professionals in these countries and their audiovisual industries will be able to use the MEDIA Programme to develop, distribute and promote their work, and also for training measures.

The eight candidate countries involved in these decisions are: Bulgaria, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Poland and Slovakia. A similar result should soon follow for Slovenia. Each new country taking part in MEDIA will make a financial contribution to the programme, partly through its national budget

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"Cinema: enlargement soon to be a reality. 8 candidate countries admitted to MEDIA programme", Press Release of the European Commission of 17 May 2002, IP/02/730, available at:

http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/730101RAPID&lg=EN&display=

DE-EN-ES-FR

"Distribution of Third Country Films in the European Union (1996-2002)", Report by the European Audiovisual Observatory for the Conference "The Film and Audiovisual Sector in the European Union and Third-Countries" organised by the Spanish Presidency of the European Union (Madrid, 18-19 April 2002), available at:

http://www.obs.coe.int/about/oea/pr/disfilms_pays_tiers.html.en

DE-EN-FR

European Commission: Conclusions of Cinema and Audiovisual Seminar

A seminar on certain aspects of the monitoring of the Cinema Communication took place in Seville in May under the auspices of the Spanish Presidency of the European Union. The Cinema Communication, or more accurately, the Communication on certain legal aspects relating to cinematographic and other audiovisual works, was adopted by the European Commission in September 2001 (see IRIS 2001-9: 6). The specific aspects of the monitoring task under scrutiny at the Seville Seminar were: heritage preservation; digital cinema; cinematographic education and the rating of films.

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Conclusions of the Seminar on the monitoring of the cinema communication on the future of the film and audiovisual industry: Aspects relating to heritage preservation, digital cinema, cinematographic education and the rating of films, Seville, 6-7 May 2002, available at:

http://europa.eu.int/comm/avpolicy/media/pdf/files/sevcin_en.pdf

EN

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works, COM(2001) 534 final, of 26 September 2001, available at:

http://europa.eu.int/comm/avpolicy/regul/cine1_en.htm

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

European Commission: Request for Comments on Overall Report on Local Loop Unbundling

The European Commission has invited comments on a report on local loop unbundling. This invitation follows the rendering public in February 2002 of the report

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audiovisual works (see IRIS 2001-9: 6). This allows the draft scheme to come under the so-called "cultural derogation" provided for by Article 87(3)(d) of the EC Treaty. According to Article 87(3)(d), "aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest" may be considered compatible with the common market.

The proposed aid is intended for the various stages of film-making and related processes (production, distribution and screening) and will take the form of audience-related support and project-based support. ■

and the rest via the Phare Programme (a pre-accession instrument financed by the European Communities to assist the applicant countries of central Europe in their preparations for joining the European Union). The procedures for participation by film- and programme-makers and industrialists in the audiovisual sector in the candidate countries will be the same as those which apply to their counterparts in the EU Member States.

This participation of applicant countries in Media Plus and Media Training is especially important since a recent analysis by the European Audiovisual Observatory, "Distribution of Third Country Films in the European Union (1996-2002)", showed that between 1996 and 2001, only 42 films from the countries of Central and Eastern Europe were distributed commercially in at least one Member State of the European Union and were seen by a total of 2.2 million people in the Union, (corresponding to a market share of 0.054%).

The MEDIA Programme, which has a budget of 400 million Euros for 2001-2005, entered into force in January 2001 and has the objective of strengthening the competitiveness of the European audiovisual industry with a series of support methods concerning: the training of professionals; the development of potentially attractive works; the transnational promotion and distribution of audiovisual programmes and films and support for film festivals. ■

graphic education and the rating of films.

Participants in the Seminar reaffirmed the importance of concerted national and European initiatives aiming to preserve, restore and valorise film and audiovisual archives. They also reiterated the importance of creating national registers and repositories for films and audiovisual works. It was observed that digital technologies can play a crucial role in rendering archive material suitable for preservation, as well as contributing to the improved distribution of audiovisual works, but that the authorities responsible for the espousal of such technological innovations should be mindful of their accessibility to the public.

The participants also underscored the advantages that the adoption of common rating systems for audiovisual and cinematographic works by EU Member States would have for Europe-wide film distribution. Analogous rating systems would have to apply to the cinema, DVDs and television, and would necessarily have to show due deference to cultural diversity in the Member States. Also in connection with the distribution of audiovisual and cinematographic works, attention was directed towards the MEDIA Plus Programme (see IRIS 2002-6: 6) and towards the benefits of cinematographic education. ■

entitled, "Legal Study on Part II of the Local Loop Unbundling Sectoral Inquiry", prepared for the Commission and the EFTA Surveillance Authority by Squire, Sanders and Dempsey L.L.P.

The study gives particular attention to the views of new entrants on their ability to obtain unbundled access

"Legal Study on Part II of the Local Loop Unbundling Sectoral Inquiry", Squire, Sanders & Dempsey L.L.P., in execution of Contract No. IV/37.640, February 2002, available at: http://europa.eu.int/comm/competition/antitrust/others/sector_inquiries/local_loop/

EN

Regulation No. 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop, Official Journal of the European Communities L 336, 30 December 2000, pp. 4-8, available at: http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000R2887&model=guichet

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

NATIONAL

BROADCASTING

BA – Law on the Public Broadcasting “Imposed”

On 23 and 24 May 2002, the High Representative issued a package of decisions providing a legal framework for three public broadcasters in Bosnia and Herzegovina, namely the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina (hereinafter “the Law on the Basis of the PB System”), the Law on Radio-Television of the Federation of Bosnia and Herzegovina, and the Law on Radio-Television of *Republika Srpska*.

According to Article 3 of the Law on the Basis of the

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Decision of 24 May 2002 Imposing the Law on Radio-Television of *Republika Srpska*
Decision of 24 May 2002 Imposing the Law on Radio-Television of the Federation of Bosnia and Herzegovina
Decision of 23 May 2002 Decision Imposing the Law on the Basis of the Public System and on the Public Broadcasting Service of Bosnia and Herzegovina
<http://www.ohr.int/decisions/mediadec/archive.asp>

EN

CH – Radio and TV Licence Fees Raised

The Swiss *Bundesrat* (Council of Ministers) decided in early May 2002 to raise radio and TV licence fees by 4.1%, only partly meeting the demands of the public service broadcaster *SRG*, which had requested a 5% increase. The rise in fees was granted largely in response to a ruling issued by the *Bundesgericht* (Federal Appeal Court) in January 2001. The Court had ruled that the exemption system used by the federal authorities at the time was “unfair” and therefore unconstitutional. In June of that year, the Council of Ministers amended the *Radio- und Fernsehverordnung* (Radio and Television Ordinance) in accordance with the aforementioned ruling (see IRIS 2001-7: 7). In future, any person receiving an old-age or disability pension and supplementary benefits will not need to pay the licence fee, as long as they request such an exemption. For 2001 and probably 2002, the resulting

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Council of Ministers press release, 1 May 2002, available at: http://www.admin.ch/cp/d/3ccfacbd_1@fwsrvrg.bfi.admin.ch.html

DE

CZ – Revised Czech Radio Act

The Parliament of the Czech Republic has passed an amendment to the Czech Radio Act, based on the amendment to the Czech Television Act (see IRIS 2001-7: 8).

In terms of organisation, the Director General of Czech radio will continue to be elected by the members of the Czech Radio Council, which for its part will still be elected by the lower house of Parliament. According to the amend-

to the local loop of the fixed incumbent in European Union (and European Economic Area) Member States. It treats, *inter alia* and again, primarily from the perspective of new entrants, the approaches of fixed incumbents in the various States to the implementation of Regulation No. 2887/2000 of the European Parliament and of the Council on unbundled access to the local loop (see IRIS 2000-10: 3 and IRIS 2001-2: 3). The central objective of this Regulation is to intensify competition and to stimulate technological innovation on the local access market, “through the setting of harmonised conditions for unbundled access to the local loop, to foster the competitive provision of a wide range of electronic communications services” (Article 1). ■

PB System, the Public Broadcasting System will be composed of: (1) the Public Broadcasting Service of Bosnia and Herzegovina (PBS BA), (2) Radio-Television of the Federation of Bosnia and Herzegovina (RTV FBA), and (3) Radio-Television of *Republika Srpska* (RT RS) (see IRIS 2002-5: 5), adding that “[t]he organisation and activities of RTV FBA and RT RS as well as other related issues not regulated by this Law, shall be regulated by the laws on RTV FBA and RT RS”.

PBS BA should be a nation-/countrywide public broadcaster while the other two shall remain as entity-based public broadcasters. As to the program content, Article 41 of the Law on the Basis of the PB System requires “Equal Ethnic Representation”, as it is officially named, which also implies that PBS BA programming should reflect ethnic, cultural, social, religious and related pluralism and diversity.

Article 17 on the Basis of the PB System, concerning the distribution of broadcasting fees, guarantees 58 per cent of the fees to the public broadcasters and 42 per cent to PBS BA plus District Brcko. ■

fall in licence revenue may be offset by the remaining surplus from the radio and television accounts (1993 to 1997) of the former *Telecom PTT*.

The Council of Ministers believes that, under the new arrangements, around 114,000 additional households will be exempt from the licence fee by 2004, thus cutting the *SRG*'s income by around CHF 47 million (approx. EUR 31.7 million) per year. In the short term, such a shortfall cannot be offset either by advertising revenue or by other cost-cutting measures. Unlike the *SRG*, which had called for a 5% rise, the Government thought a 4.1% increase was reasonable. This decision was supported by the pricing watchdog, whose main role is to monitor price fluctuations and prevent prices becoming over-inflated because of insufficient competition. The authorised increase only serves to compensate for the loss of revenue created by the aforementioned exemptions, granted for social reasons. The *SRG* must take cost-cutting measures to counteract last year's fall in advertising revenue and the resulting operating loss. ■

ment, nominations for election to the Council may also be proposed by organisations and associations representing cultural, regional, social, religious, scientific or environmental interest groups, as well as trade unions, employers and national minorities. According to a new rotational system, one-third of the members will step down every two years. In principle, Council meetings are to be held in public and the minutes of those meetings published. A new committee will monitor how the funding and assets of

Czech radio are used. Its members will be appointed by the Council, to which it will report any breaches it finds and will recommend the necessary sanctions.

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The amended Act also lists the duties of public service radio. In this connection, the Director General will submit to Parliament a code of conduct for Czech radio, setting out the basic principles for the activities of public service radio. Failure to respect the provisions of the code may lead to the

Act no. 193/2002: Collection of Acts and Decrees of the Czech Republic - amendment to the Czech Radio Act, available at:
<http://www.sbirka.cz/NOVE/02-192.htm>.

CS

DE – PrimaCom Instructed to Carry Channels

On 22 April 2002, the Media Council of the *Sächsische Landesanstalt für privaten Rundfunk* (Saxony private broadcasting authority - SLM) issued an order, instructing cable network operator *PrimaCom AG* to carry certain channels. The order arose from a complaint lodged by the two public service broadcasters *ARD* and *ZDF* against *PrimaCom AG* at the end of January. *ARD* and *ZDF* claimed that *PrimaCom* was not making their digital programme bundle fully available to viewers in Leipzig. They argued, *inter alia*, that by refusing to retransmit them as part of the bundle, *PrimaCom* had withheld from viewers important programme elements such as the regional TV channel operated by the public service broadcaster *SWR* in

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See the SLM press release of 13 May 2002, available on the Internet at:
http://www.slm-online.de/aktuell/prm02_13.htm#punkt3

DE

FR – Publication of Work Statements for the Public-sector Channels for Terrestrially-broadcast Television

Terrestrially-broadcast digital television is supposed to be starting up before the end of the year, but a few adjustments to the relevant regulations are still required. Thus, just hours before the Jospin government stood down, the work statements for the public-sector channels for terrestrially-broadcast digital television were gazetted. The public-sector service is supposed to offer between eight and thirty-three channels, broadcasting unencrypted and free of charge the channels *France 2*, *France 3*, *La Cinquième*, *ARTE*, the parliamentary channel, eight regional channels dependent on *France 3*, one non-stop news channel and one channel broadcasting repeats of broadcasts by the three current public-sector channels. Apart from the fact that these amend the work statements for *France 2*, *France 3* and the *Télévision du savoir de la formation et de l'emploi* channel – now officially called *La Cinquième* – to allow them to cope with their new missions, the new decrees also lay down the work statements for the “non-stop news channel” and the “repeats” channel created specially for TNT. Thus the mandate of the future non-stop news channel is to “offer

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Decree no. 2002-750 of 2 May 2002 amending the work and mission statement for the companies France 2 and France 3

Decree no. 2002-751 of 2 May 2002 amending the work and mission statement for the company Télévision du savoir, de la formation et de l'emploi

Decree no. 2002-753 of 2 May 2002 approving the work statement for the company provisionally entitled La Chaîne de rediffusion

Decree no. 2002-752 of 2 May 2002 approving the work statement for the company provisionally entitled La Chaîne d'information continue

Journal Officiel (official journal), 4 May 2002.

FR

dismissal of the Director General or of an employee.

After the second chamber of the Czech Parliament, the Senate, had referred the draft amendment back to the lower house with proposals for further amendments, the lower house re-adopted the text in its original version, whereupon the President of the Czech Republic exercised his veto against the proposal. In his opinion, the Act contained the same flaws as the amendment to the Czech Television Act (see IRIS 2001-3: 8). The main point of contention is the fact that the lower house of Parliament bears sole responsibility for electing the members of the Czech Radio Council and approving the code of conduct for Czech radio. The President believes that the Senate, as the second chamber of Parliament, should at least be involved in these decision-making processes so that decisions are taken independently of party political interests. However, the lower house of Parliament voted down the President's veto on 9 May 2002 and the amended Act entered into force on 22 May 2002. ■

Rheinland-Pfalz, or the private channel *CNBC*, which co-operated with *ZDF* and was included in its digital bundle. They claimed that *PrimaCom* had therefore breached the *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting). *PrimaCom*, which had agreed a separate contract with *CNBC* to retransmit its programmes, refuted the accusations. It argued that it had met its duty to retransmit “*ARD Digital*” and “*ZDF vision*” and failed to see why it should be obliged to carry private third-party channels that were financed entirely through advertising. The SLM therefore launched an investigation, as a result of which it issued the aforementioned order.

The SLM states in the order that, in accordance with Article 19 para. 3 of the Inter-State Agreement on Broadcasting, public-service broadcasters are allowed to include commercial channels in their digital bundles and that these are included in the duty of retransmission enshrined in Article 52 of the Agreement. *PrimaCom AG* may yet lodge a complaint about the order with an administrative court. ■

viewers a continuous news service on current affairs in France and the rest of the world”. This means that it “ensures that political formations in all their diversity have comparable programming conditions for their presence on television”. Broadcasting programmes or images on court proceedings “requires particular attention to be paid to respect for the presumption of innocence, the preservation of privacy and the anonymity of juvenile delinquents”. Although the channel will be allowed to broadcast “audiovisual works for up to 20% of its airtime”, it will not however be able to broadcast full-length cinema films. The remit mandate of the repeats channel – the channel intended to encourage “cultural discovery” – is to “offer a selection of the best programmes broadcast on public-sector television while at the same time affirming its own identity through the programmes it produces and purchases”.

Changes have also been made to the work and mission statements for *France 2* and *France 3*. These now constitute the first new element defining the missions of the public-sector services since 15 November last year when the European Commission asked for a precise, official definition of the mandate of the public service. Moreover, making allowance for the changes introduced by the Act of 1 August 2000, the preamble takes note of the creation of *France Télévision* and defines the relations between the various companies in the group in order to reach a clearer definition of their role. The duration of advertising spots is also reduced from twelve to eight minutes per hour. Lastly, the decree applies new regimes to the contribution service editors make to the production and distribution of audiovisual works and cinema films (see IRIS 2002-2: 8). ■

FR – France: CSA Examines the Consequences of Changes at Canal +

On 16 April, Mr Messier, chairman of the company Vivendi Universal, announced that Xavier Couture would be replacing Pierre Lescure as chairman of the board of management of the Canal + group. The CSA (*Conseil supérieur de l'audiovisuel* – the audiovisual regulatory authority) immediately announced that it would be hearing Pierre Lescure, the signatory of the station's agreement, and Jean-Marie Messier, as it wants to make sure that Canal + SA will adhere strictly to all the obligations listed in its agreement and ensure respect for the channel's editorial independence from its principal shareholder, Vivendi Universal, as guaranteed by the charter referred to in Article 5 of the agreement with the CSA. The CSA also feels that the departure of the station's managing director, Mr Olivennes, and Mr Lescure could fall within the scope of Article 42-3 of the Act of 30 September 1986 as amended, according to which "authorisation may be withdrawn, without any prior notice being required, in the event of substantial modifications being made to the data in the light of which the authorisation was issued, particularly changes made in the composition of the company capital or its management bodies or in the way in which it is financed". The CSA is concerned with ensuring that Vivendi Universal respects its undertakings regarding both the station's independence and the French cinema industry, and therefore wrote to

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CSA press release no. 484 of 17 April 2002
La lettre du CSA (CSA newsletter), May 2002, p. 13

FR

GB – Draft Bill to Reform Communications Regulation and Media Ownership Restrictions Published

The UK Government has published a draft Bill to implement the proposals set out at the end of 2000 in its Communications White Paper (see IRIS 2001-1: 8). Consultation on the Bill runs until 2 August 2002; a joint committee of the two Houses of Parliament will also be scrutinising the Bill during this period and will report by 7 August. It is expected that the Bill will be introduced into the following Parliamentary session and will become law by late 2003.

The major changes proposed in the Bill are as follows. A new single regulatory body will be established, the Office of Communications (OfCOM), to replace the five existing regulators (the Independent Television Commission, the Broadcasting Standards Commission, the Radio Authority, the Office of Telecommunications (OfTel) and the Radio Communications Agency). OfCOM will thus be responsible for regulating both the broadcast media and electronic communications networks and services; in addition, it will take over responsibility for spectrum management. The major exception to its jurisdiction will be responsibility for ensuring that the BBC observes its public service remit; the Government's plans for this will be published later.

Mr Messier on 23 April making a number of demands, including an affirmation of the channel's editorial independence in its agreement and the appending of the charter agreed by Vivendi Universal and the CSA in 2000; the inclusion in the channel's agreement of both new production obligations provided for in the Decree of 28 December 2001, and the provisions contained in the inter-professional agreement of 20 May 2000; the inclusion in the channel's agreement of its refusal of any kind of tariff discrimination between those production companies considered to be independent and those not considered to be independent, plus confirmation in writing from the new management of the undertakings – verbal in the past – concerning the station's pre-purchasing of film rights, half-yearly presentation to the CSA of the group's consolidated accounts, and confirmation that there will be no separation of the station's distribution and publishing activities.

Despite a positive reply from Mr Messier, the CSA asked the chairman of Vivendi Universal for further details on 28 May, indicating that his replies "still left a number of points unanswered as regards the application of Article 42-3 of the 1986 Act". The CSA feels that the text of the charter between Vivendi Universal and Canal +, which should be appended to the station's agreement, is no longer "suited in its form or content to developments that have taken place within the group since its original drafting in July 2000, particularly with regard to the most recent changes in the management bodies made since the Council's letter of 23 April 2002". Canal + is therefore required to provide further information on a number of points that the CSA still finds doubtful. It should be recalled, moreover, that last January the CSA had asked the government to refer the matter to the *Conseil d'État* for its opinion in order to ensure that, following the capital operations carried out by Vivendi in the United States, the capital of Canal + SA complied with Article 40 of the Act of 30 September 1986, as amended, which limits to 20% the level of direct or indirect participation from outside the European Community in the capital of company holding authorisations. The decision of the *Conseil d'État* is expected in the next few weeks; it may well complicate the station's situation further. ■

A new, more self-regulatory system is set out for the regulation of public service broadcasters (the BBC and Channels 3, 4 and 5). OfCOM will report every three years on the extent to which the public service broadcasters have met the requirements set out in the Bill, comprising the public service remit. This includes the provision of a range of high-standard and diverse programming. The report will take into account statements of programme policy to be produced annually by the broadcasters which will set out how the remit will be fulfilled in the following year as well as performance in doing so in the previous year. Should performance be unsatisfactory, OfCOM will be able to replace this regime with more detailed regulation; it retains power to impose penalties, including large financial penalties, for breach of licence conditions, including those relating to public service.

Controversial changes are also proposed to the rules restricting media ownership. The Government will remove the prohibition on non-EEA ownership of a broadcaster, thereby opening up the possibility of takeovers by US media enterprises. It will also lift the restriction on ownership by advertising agencies and relax that on ownership by religious organisations. Rules on cross-media ownership will be relaxed, although the owner of a 20% share of the national newspaper market (such as

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News International) will still be prohibited from holding more than a 20% stake in a Channel 3 service; ownership

Draft Communications Bill (May 2002), Department of Trade and Industry and Department for Culture, Media and Sport, available at:
<http://www.communicationsbill.gov.uk/>

LU – New Policy Paper on Reform of Electronic Media Act

The Government of the Grand-Duchy of Luxembourg has published a policy paper outlining its intentions for the upcoming reform of the 1991 Electronic Media Act. The paper, *Orientations pour une nouvelle législation sur la radio et la télévision*, published on 14 March 2002, is the Executive's contribution to a parliamentary debate on the topic that is currently scheduled for June 2002. Since the drafting of new legislation will only commence after the parliamentary hearing, any reform is unlikely to be enacted before 2003 (the current Parliament ends its term in office in June 2004).

The paper announces the government's intention to simplify and clarify the legislation and to streamline administrative processes.

In the government's view, technological progress – namely the development of digital broadcasting – would

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Orientations pour une nouvelle législation sur la radio et la télévision, 14 March 2002, adopted by the Council of Government on 1 March 2002, available at:
<http://www.gouvernement.lu/gouv/fr/act/0203/14biltgen/orientation.rtf>
Summary of the Council of Government Meeting of 1 March 2002, available at:
<http://www.gouvernement.lu/gouv/fr/act/0203/01conseil/01conseil.html>

FR

PL – Discussion on the Draft Broadcasting Act

On 27 March 2002 the Prime Minister sent a broad draft of amendments to the Broadcasting Act of 29 December 1992 (with later amendments) to the Speaker of the Parliament, thus initiating the legislative procedure (see IRIS 2002-5: 6).

The draft comprises several sets of provisions. Probably, the most problematic and most widely commented on are the new provisions concerning media concentration. Article 36 para. 3 of the aforementioned draft provides that a broadcasting licence shall not be granted if:

1. the applicant, requesting the license for the transmission of the radio or television programme service via the network of transmitting stations whose range covers over 80% of the country's population, transmits a radio or television programme service of such range, or owns a nation-wide daily newspaper or periodical;

2. the applicant, requesting the license for the transmission of the radio or television programme service via transmitting station or stations whose range covers a town with a population exceeding 100,000, transmits a radio or television programme service via the transmitting stations whose range covers over 80% of the country's population;

3. the applicant, requesting the license for the transmission of the radio or television programme service via transmitting station or stations whose range covers a town with a population up to 200,000, transmits another – relevant radio or television – programme service in the given area;

of Channel 5 will however be permitted. The owners of Channel 3 licences will be permitted to merge into a single company and joint ownership of Channel 3 and Channel 5 licences will be permitted.

The Bill also proposes important changes in telecommunications, largely implementing European liberalisation developments; they include the removal of the requirement for the licensing of telecommunications systems. ■

make it possible to abandon the current restrictive legislation requiring television and radio stations to apply for a broadcasting licence. Restrictions on the use of frequencies would be maintained only where they are necessary because of technological bottlenecks (the paper mentions analogue radio and television and obligations on cable networks to carry certain broadcasts).

Future legislation could also draw a clearer distinction between technical rules and their supervision and rules concerning the content of the broadcast. The former would fall within the framework of telecommunications legislation, whereas problems concerning content would mostly be dealt with under the same legislation that applies to the printed press, with only a small number of specific provisions for broadcasters in the form of public service duties.

An important section of the policy paper sets out the government's proposals for a new regulatory framework that would involve the creation a new Independent Regulatory Authority, which would be in charge both of the authorisation process and its supervision, including the power to impose sanctions. Under the government's plans, the powers of this body would be vested in a directorate of three permanently appointed members, whose work would be overseen by a supervisory council. ■

4. the applicant, requesting the license for the transmission of the radio or television programme service via transmitting station or stations whose range covers a town with a population exceeding 200,000, transmits two or more other – radio or television, as relevant, – programme services in the given area;

5. the applicant, requesting the license for the transmission of the radio or television programme service, transmits another – radio or television, as relevant, – programme service, of the same nature, in the given area.

Applying the aforementioned provisions, a dependent – in the sense of corporate law – entity's application for the license shall be ascribed to the dominant parent company within the meaning of the Act on competition and consumer protection of 15 December 2000.

The entity – in the sense of corporate law – which fulfils the aforementioned negative conditions to be licensed, may neither directly nor indirectly own or exercise rights attached to the shares constituting more than 20% of the share capital of the entity which holds the license. Legal actions taken in violation of this provision shall be null and void.

It should be noted that the aforementioned provisions shall not apply to programme services transmitted exclusively via satellite or intended for exclusive transmission in cable networks or as part of terrestrial or satellite multiplex signals or to public service broadcasters.

The Draft launched a broad debate on new proposals. The Government states that the only aim of these provisions is to prevent the creation of media monopolies. Private media argued that these provisions would limit the development of electronic private media and would make

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them less competitive than foreign media investors entering on Polish market. The National Broadcasting

Further information available on the NBC's website:
<http://www.krrit.gov.pl/strony/krrit/nowelizacja.htm>

PL

PT – New TV Law to Reduce RTP Advisory Council's Power

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On 23 May 2002, the Portuguese Parliament approved an amendment to the *Lei de Televisão* (Television Law n° 31-A/98 of 14 July) removing the power of the *Conselho de Opinião* (Advisory Council) of the Public Service Television Broadcaster to veto the government-appointed Administration of the company.

*Decreto n° 3/IX, Segunda Alteração à Lei n° 31-A/98, de 14 de Julho (Aprova a Lei de Televisão), alterada pela Lei n° 8/2002, de 11 de Fevereiro (second amendment to the Television Law n° 31-A/98 of 14 July), available soon at: <http://www.assembleiadempublica.pt/>
*Deliberação do Conselho de Ministros (9 de Maio de 2002) (Deliberation of the Council of Ministers of 9 May 2002), available at: www.portugal.gov.pt or www.portugal.gov.pt/PortalDoGoverno/Conselho.../DeliberacaoCM20020509
"Parecer do Conselho de Opinião sobre a composição do novo Conselho de Administração da RTP", 16 May 2002 (Statement of the Advisory Council on the Composition of RTP's new Administration), available at: http://www.naodesligue.com/rtp/artigo.asp?cod_artigo=134007
*Proposta de Lei n°4/IX, Altera a Lei n°31-A/98, de 14 de Julho (Law Proposal n°4/IX amending Law n°31-A/98 of 14 July) available soon at: www.assembleiadempublica.pt
*Lei da Televisão (Television Law), Lei n° 31-A/98 of 14 July, available at: http://www.aacs.pt/legislacao/lei_da_televisao.htm****

PT

RO – Electronic Media Bill

In accordance with a Bill tabled in May 2002, the current *Legea Audiovizualului Nr. 48 din 21 mai 1992, modificata prin OUG 48/1999, aprobata, modificata si completata prin Legea Nr. 145 din 26 iulie 2000* (Act no.48 of 21 May 1992 on the activities of the electronic media in Romania) is to be replaced.

Act no.48 has been amended many times over the last few years and the new legislation will incorporate the provisions of the relevant EC Directives more effectively. According to the Bill, the *Consiliul National al Audiovizualului* (National Audiovisual Council – CNA) will have exclusive responsibility for monitoring programme content in broadcasting. The CNA currently comprises 11 members and is controlled by Parliament. Three members are appointed by the Senate, three by the Parliament, two by the Romanian President and three by the Govern-

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For information about the Bill, see the Parliament website: http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=3160

RO

NEW MEDIA/TECHNOLOGIES

AT – Fight Against Cybercrime Stepped Up

In mid-April, the national office for the fight against computer and Internet crime, created by the Ministry of the Interior, published its first report. This special unit, established on 1 August 1999, reports to the *Abteilung "Zentrale kriminalpolizeiliche Dienste"* ("central criminal police services" department), which forms part of the

Council, the regulatory body for the broadcasting sector, issued on 23 April 2002 a Statement referring the draft and changes introduced by Government into it. NBC states that in connection with a governmental proposal of sharpening anti-concentration provisions (in particular the NBC whose original proposals did not enlarge restrictions on the press market, see IRIS 2002-3: 10), and in the light of remarks made during public discussion, a reconsideration of drafted provisions referring to the issue of concentration in the media sector would be useful. ■

Following the Council of Ministers' decision of 9 May 2002 to set up, in six months' time, a new public service broadcasting company with a single generalist channel, RTP's Advisory Council issued a binding statement on 16 May 2002 in which it reacted negatively to the new five-member top management team appointed by the government. The government perceived this decision as illegal, and proceeded to announce that same day – following a Council of Ministers' meeting – its intention to amend the law. According to the government, the Television Law gives the Advisory Council the power to issue a pronouncement on the composition of a newly proposed Administration, but not on the government's broadcasting policy. RTP's Advisory Council put forward the argument that its decision is fully in accordance with the law and established practice. In a public statement, the Advisory Council stated that in an evaluation of a proposed administration, the analysis of individuals' *curricula vitae* cannot be dissociated from the project they are supposed to implement.

The amendment to the Television law is now awaiting presidential promulgation. ■

ment. Only the CNA is and shall continue to be authorised to allocate licences for electronic media providers. However, a second "broadcasting licence" (relating to programme frequencies) is to be introduced and allocated by a new body known as the *Autoritatea de Reglementare in Comunicatii* (regulatory authority for communication). These licences will be valid for nine years. The Bill also states that the CNA should be allowed, together with the new regulatory authority, to organise a public invitation for tenders every four years in order to establish an institution specialising in the establishment of viewer/listener figures and entrusted with the task of calculating market shares in the electronic media sector. The Bill also requires that European productions should account for the majority ("*o proportie majoritara*") of broadcasting time. Advertising spots and teleshopping should not exceed 12 minutes per hour for private TV stations, while no more than 8 minutes per hour of public service TV may be devoted to advertising. In addition, public service TV will only be allowed to broadcast advertising between programmes and not, for example, in the middle of films. ■

director general for public security.

The report shows that the number of attacks by hackers and viruses and cases of computer fraud have risen sharply. In response to this trend, the Minister of the Interior has announced five new measures: the proposed bureau for the fight against IT crime will be created as part of the new federal crime office later this year and equipped with the necessary staff and technology; offices for the fight against computer crime are to

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Vienna

be set up at *Bundesland* level; co-operation with industry is to be increased; international co-operation will be

Ministerialentwurf betreffend ein Bundesgesetz, mit dem das Strafgesetzbuch, die Strafprozeßordnung 1975, das Strafvollzugsgesetz, das Suchtmittelgesetz, das Gerichtsorganisationsgesetz, das Waffengesetz 1996 und das Fremdenengesetz 1997 geändert werden - Strafrechtsänderungsgesetz 2002 (Act amending criminal law), available at: http://www.parlinkom.gv.at/pd/pm/XXI/ME/his/003/ME00308_.html

DE

NO – First Conviction for Dissemination of Racist Material over Internet

On 22 April 2002 *Asker og Bærum Tingrett* (*Asker* and *Bærum* District Court - a court of first instance) became the first Norwegian court to convict a person (hereinafter referred to as "T.") to unconditional imprisonment (30 days) for having disseminated racist material among the public using the Internet and printed media.

Fifty-nine year-old T. is one of the leading figures in an organisation called *Vigrid*. This organisation believes in racial superiority and has declared the Jewish people to be its archenemy. On the organisation's website and in its monthly magazine, *Vigrid* has expressed its views through statements claiming the superiority of the white race and accusing the Jews of paedophilia, necrophilia, sodomy and white-slave traffic of non-Jewish women.

These statements led the prosecution to charge T. with the infringement of *Straffeloven* §135a (General Penal Code - *strl.*), which prohibits utterances that threaten, insult, or subject to hatred, persecution or contempt any (group of) person(s) because of their creed, race, colour or national or ethnic origin. In assessing the charges, the Court found that T.'s active role on the *Vigrid* website and the fact that he was the sole editor of the monthly

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Asker og Bærum Tingrett, 22-04-02 nr.02-136M; Almindelig borgerlig Straffelov (Straffeloven), 1902-05-22 nr.10 (The General Civil Penal Code, Act of 22 May 1902 No. 10), available at: <http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.doc> (EN), <http://www.lovdato.no/all/nl-19020522-010.html> (NO); The International Convention on the Elimination of All Forms of Racial Discrimination, 1965, available at: http://www.unhchr.ch/html/menu3/b/d_icerd.htm; Kongeriget Norges Grundlov, given i Rigsforsamlingen paa Eidsvold den 17de Mai 1814, (Grunnloven), 1814-05-17 (The Constitution of the Kingdom of Norway of 17 May 1814), available at: <http://www.odin.dep.no/odin/engelsk/norway/system/032005-990424/>

EN-NO

RELATED FIELDS OF LAW

AL – Courts Protect the Copyright

In the last few months three decisions relating to protection of copyright were released. The cases concerned the complaints of the association *Albautor*, the only private collecting society for the broadcasting sector in Albania, and the *Qendra Kombetare e Kinematografise* (National Center of Cinematography), a state body overseeing cinematographic production and distribution, concerning the payment of copyright fees.

On 21 December 2001 the Court of Tirana – in a criminal case – sentenced the private broadcasting company "Media Vision" and imposed on it a penalty of about EUR 15,000. The decision was based on Article 419 of the Criminal Code of the Republic of Albania. The "Media

Hamdi Jupe
Albanian
Parliament

Decision of the Court of Tirana, No. 4378, date 21 December 2001
Decision of the Court of Tirana, No. 1109, date 20 March 2002
Decision of the Court of Tirana, not yet published

SQ

stepped up and greater efforts will be made to raise public awareness of the problem.

In parallel to this, in March the Ministry of Justice tabled a draft 2002 *Strafrechtsänderungsgesetz* (Act amending criminal law), which lists, *inter alia*, a whole series of new computer-related criminal offences. The period set by the Ministry of Justice for the submission of opinions on the draft expired on 25 April, so the Government is likely to submit a proposal to Parliament in the near future. ■

magazine made him responsible for the content of both. In order to ascertain whether the aforementioned statements constituted a violation of §135a *strl.*, the Court weighed the purpose and scope of §135a *strl.* on the one hand against freedom of expression and freedom of religion on the other. Freedom of religion was considered because Norse mythology and the worship of Nordic gods play an important role in *Vigrid*.

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, aiming at hindering the spread of racist ideas, formed the background for the adoption of §135a *strl.* Freedom of expression and freedom of religion are protected by the Norwegian Constitution and through various international instruments. The Court referred to the jurisprudence of the European Court of Human Rights which gives racist utterances very limited protection. *Høyesteretten* (the Supreme Court) has in previous cases established that there should be a rather large margin for unfortunate and tasteless expressions.

Asker og Bærum Tingrett, however, found T.'s statements to be of such a grossly racist nature that they are not covered by freedom of expression or by freedom of religion. *Asker og Bærum Tingrett* emphasised that the statements could not be regarded as isolated or spontaneous expressions. The utterances in question form part of a great number of similar expressions made by an organisation headed by T. that tries to recruit young people in particular.

The conclusion of the Court was that T. had made insulting and disdainful statements about Jews and coloured people in Norway, exposing them to hatred and persecution. T. was convicted to a total of 75 days of imprisonment (of which 45 are conditional). T. may appeal the decision. ■

"Vision" company, the owner of the private television "Vision Plus", signed a contract with the *Albautor* association to pay copyright fees in accordance with Albanian Law No. 8410 "On public and private radio and television in the Republic of Albania" of 30 September 1998. Signing such contracts is a prerequisite for receiving a license from the state authorities for (private) broadcasting, but "Media Vision" failed to fulfil the obligation to pay *Albautor's* claims.

Another case was decided by the Court of Tirana on 20 March 2002 regarding *Albautor* and the private television "Telenorba shqiptare" (Albanian Telenorba). According to the Civil Code of the Republic of Albania the broadcaster was ordered to fulfill his copyright obligations resulting from a contract similar to the aforementioned.

Regarding the copyright duties the "IDA", the biggest private Albanian film distributor, was ordered in April 2002 to pay EUR 3000 for the use and duplication of film material to the National Center of Cinematography. ■

DE – New Provisions on Protection of Minors

In May, new efforts were undertaken to reform the regulatory measure concerning the protection of minors. Well-publicised proposals were made for an Inter-State Agreement on the protection of human dignity and minors in broadcasting and telemedia and for a new *Jugendschutzgesetz* (Youth Protection Act). Up to now, different provisions regulating the protection of minors have applied in the broadcasting, media services and tele-services sectors. Certain more general laws on the protection of young people (the Act on the dissemination of written material and media content harmful to minors, and the Act on the protection of minors in public) also apply to audiovisual media. In the broadcasting and media services sectors, the *Bundesländer* are responsible for the protection of minors, although such protection falls under the Federal Government's remit in other areas (such as tele-services, written press, media content and general youth protection). The application of youth protection provisions is therefore monitored by many different authorities at national and regional levels. In addition, some individual sectors have their own self-regulatory bodies, whose relationship with the national supervisory authorities is not always clearly defined. The aim of the reforms is to bring an end to this fragmentation of youth protection law and standardise the protection of minors and supervisory structures in Germany. To this end, the current division of responsibilities means that an Act (Youth Protection Act) is needed

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Discussion paper for a draft *Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien* (Inter-State Agreement on the protection of human dignity and minors in broadcasting and telemedia - JMSIV), available at: www.rae.de/jmstv.pdf

Draft *Jugendschutzgesetz* (Youth Protection Act - JuSchG), available at: http://www.bmfsfj.de/top/dokumente/Pressemitteilung/ix_79408.htm?template=single&id=79408&script=1&ixepf=79408

DE

FR – French Regulations on Advertising under Scrutiny at the European Commission

On 7 May, the European Commission decided to commence infringement proceedings against France and sent formal notice in respect of the Decree of 27 March 1992. Article 8 of the Decree prohibits advertising on television for literary publishing, the cinema, the press and distribution. This decision follows two complaints, one brought by a Belgian furniture distributor whose advertising was refused by the *France 3-Nord* television channel, and the other complaint brought by the magazine press syndicate (*Syndicat de la presse magazine* - SPMI), with the support of the press editor *Emap*, whose promotion of its magazine *FHM* was refused by the *M6* television channel. France justifies these regulations by the need to preserve the pluralism of the press and cultural diversity and to protect small traders, but its arguments did not apparently convince the Commission, which considered that the Decree in question infringed the principle of the freedom to provide services, as prescribed in Article 49 of the Treaty. Mr Bolkestein, Commissioner in charge of the Internal Market, indicated his doubts as to

at national level, while an Inter-State Agreement (on the protection of human dignity and minors in broadcasting and telemedia) is required at *Bundesland* level. Special regulations should ensure that bodies involved with youth protection at both national and regional levels base their decisions on a standard set of criteria. The *Bundesrat* (upper house of parliament) will decide on the Federal Act in July; the Act should enter into force at the same time as the Inter-State Agreement.

The Youth Protection Act will replace the aforementioned general youth protection laws. The distinction between media services and tele-services will be dropped in the area of youth protection, although in future a distinction will be drawn between telemedia (all new media) and so-called carrier media (off-line media). The *Bundesprüfstelle für jugendgefährdende Schriften* (federal investigation office for written material harmful to minors), which is to be renamed the *Bundesprüfstelle für jugendgefährdende Medien* (federal investigation office for media harmful to minors), will be given greater responsibility and, in future, will be able to take action of its own accord. Furthermore, computer games will, just like films and videos, be given a legally-binding age restriction rating. In general, media content that is harmful to minors will be more tightly controlled.

With regard to broadcasting and telemedia content, a distinction will be made between inadmissible content, content that is harmful to minors and that which is *potentially* harmful to minors. Content that is actually harmful to minors must not be accessible to young people, whereas providers need only restrict access for minors to content which is *potentially* harmful to them.

Self-regulatory bodies are to be given a more prominent role. However, this only applies to those which have been certified by a State authority in accordance with certain criteria. One of these criteria concerns funding: self-regulatory bodies must show that they are properly financed by the providers concerned. State or judicial bodies may only examine their decisions to ensure that they are justifiable. The *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media), the State body responsible for granting these certificates, will be restructured. As well as monitoring the activities of self-regulatory bodies, it will act as the central youth protection authority at *Bundesland* level, with responsibility for resolving youth protection issues in accordance with the Inter-State Agreement. ■

the proportionality of this measure and wondered if there were other less restrictive ways of achieving the same aims for these sectors than placing a total ban on television advertising. The Commission apparently feels that the ban hampers the free movement of services in the Community in two ways, firstly by preventing the television channels selling advertising airspace to distributors, publishing groups or other undertakings in these sectors, and secondly by limiting communication between these undertakings and French consumers. France was therefore given two months (ie until 7 July) to change its regulations or to justify its position to the Commission.

The new Minister for Culture, Mr Aillagon, despite stating that he was "firmly attached to the stability of existing economic and cultural equilibria in the sector of the media and the written press", announced that "consultation is to commence shortly with all the groups of professionals concerned", and more particularly with the national and regional press. The regional daily press syndicate (*Syndicat de la presse quotidienne régionale*) has for its part pointed out that "30% of the advertising revenue of the regional daily press comes from large-scale distribution. This is one of the specific features of

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Blocman
Légipresse

our country that Brussels must be able to take into account". The audiovisual production union (*Union syndicale de la production audiovisuelle*) said it was in favour

HR – Radio and Television Transmitter Network Separated from Croatian Radiotelevision

Kresimir Macan
Croatian
radiotelevision
HRT

On 4 April 2002 the Croatian Government passed a decision on the division of *Hrvatska radiotelevizija* (Croatian Radiotelevision) into two companies - *Javna ustanova Hrvatska radiotelevizija* (Public service Croatian Radiotelevision) and *dioničko društvo Odašiljači i veze* (shareholder company regarding Transmitters and links) 100% owned by the Republic of Croatia. The newly-formed transmission company will be in charge of transmitting the national public radio and TV programmes, other commercial programmes on the air in Croatia as well as of the satellite distribution as Eutelsat partner on behalf of Croatia. The company has an initial capital of HRK 138.5 mio. (EUR

Zakon o Hrvatskoj radioteleviziji (Law on Croatian Radiotelevision), *Narodne novine* (Official Gazette) No. 17/01 of 2 March 2001
<http://www.nn.hr>

HR

IE – Adoption of Communications Regulation Act

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At the end of April the Irish legislature enacted the Communications Regulation Act, 2002. The Act provides for the establishment of a new body, the Commission for Communications Regulation ("the Commission"). The Commission will be established on a date to be decided by the Minister for Public Enterprise.

The Commission will take over the functions of the Office of the Director of Telecommunications Regulation, which is the body currently responsible for implementing the laws on liberalising the telecommunications market, and is also responsible for regulating broadcasting distribution and the radio spectrum.

The functions of the Commission will include, *inter alia*, managing the radio frequency spectrum; investigating complaints regarding the supply of, and access to, electronic communications services, electronic commu-

The Communications Regulation Act, 2002, available at:
<http://www.gov.ie/bills28/acts/2002/a2002.pdf>

Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop, available at:
http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000R2887&model=guichett

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

RO – Act on Classified Information Adopted and Promulgated as Matter of Urgency

Mariana
Stoican
Radio Romania
International

On 11 April, the Senate adopted the *Legea pentru protecția informațiilor clasificate* (Act on the protection of classified information) in the version previously approved by Parliament (see IRIS 2001-5: 15).

Monitorul Oficial al României Nr. 248 din 12 Aprilie 2002 (Official Gazette No. 248 of 12 April 2002)

RO

of dropping the ban on television advertising for the four sectors in question, as it believed that it was necessary to gradually lift the ban, particularly as regards large-scale distribution, in order to promote the development of terrestrially-broadcast digital television. The imminent arrival of this type of broadcasting in France raises the question of its financing, and the formal notice served by the Commission will perhaps have the advantage of providing the French authorities with an opportunity to deal with this crucial matter. ■

18,5 mio.) and 345 employees. The Government's interest in the company will be represented through the function of the Minister for maritime affairs, traffic and communications, while the Supervisory board comprises 5 members (one from the Ministry of Maritime Affairs, Traffic and Communications, the Ministry of Defense, the Ministry of Health and the Ministry of Environmental Protection and Space Planning and one representative of the employees). The former Minister of Maritime Affairs, Traffic and Communications was elected as president of the three-member Board of management of the new company on 12 April 2002. The new company is expected to start to operate autonomously as of 1 May 2002.

The division is a consequence of the new *Zakon o Hrvatskoj radioteleviziji* (Law on Croatian Radiotelevision) that envisaged this division to take place by 1 January 2002 and will enable faster digitalization and privatization of transmission network in Croatia. ■

nications networks and associated facilities and transmission of such services; and ensuring that undertakings involved in such services comply with their obligations.

"Electronic communications network" is given a broad definition in the Act. In essence it means transmission systems that permit the conveyance of signals by wire, radio, optical or other electromagnetic means. "Electronic communications service" is also broadly defined. In essence it means a service that consists wholly or mainly in the conveyance of signals on electronic communications networks. These networks include, *inter alia*, telecommunications services and transmission services in networks used for broadcasting.

The Commission will also be the national regulatory authority on unbundled access to the local loop, for the purposes of Regulation No. 2887/2000 of 18 December 2000 of the European Parliament and of the Council. In carrying out these functions, the Commission's objectives will be to promote competition, to contribute to the development of the internal market and to promote the interest of users within the European Union.

The Commission will have wide powers of enforcement, and there are heavy penalties for breaches of the Act.

The Act also contains provisions regarding electronic communications infrastructure. ■

The Act was adopted as a matter of urgency and was signed by the President on the same day.

The Act regulates access to information which is "classified" for reasons of defence, national security and law and order, or to which, as "classified information" of economic and political significance, access is restricted.

The Act entered into force on 12 April, when it was published in the *Monitorul Oficial al României* (Official Gazette) No. 248. ■

RO – Communiqué on Secret Recordings of Prominent Figures

Mariana
Stoican

Radio Romania
International

On 11 April, the *Consiliul National al Audiovizualului* (National Audiovisual Council – CNA) issued a communiqué dealing with the secret filming of prominent figures.

It took this step after a famous Romanian TV presenter was followed by a reporter for several weeks without

Comunicatul Serviciului de Presă – Imagine al CNA din 11 aprilie 2002

RO

RU – Code on Administrative Offences Adopted

After lengthy consultation, the new Code on Administrative Offences of the Russian Federation has now been adopted by the Federal Assembly and signed by the Russian President, Vladimir Putin. The Code will enter into force on 1 July 2002. The code deals extensively with administrative offences related to the right to seek, receive, and impart information.

There are two types of administrative offences outlined in the Code: those which were in the Soviet Code of 1984 on administrative offences and those which are being included in the Code for the first time. In contrast to the Soviet Code on administrative offences, the new Code establishes that administrative penalties may be imposed not only on natural persons and officials but also on legal entities. This means that if a media organization is registered as a legal entity, then the organization, the journalist, and the editor-in-chief may all potentially be held liable under the Code for the offence committed.

If an administrative offence is committed, the entity or person judged guilty of the offence, may receive a warning or be required to pay an administrative fine.

The first offence on the list is encroaching upon citizens' rights. For example, violating the established procedure for publishing documents connected with preparation and conduct of elections and referendums by mass media shall entail the imposition of an administrative fine.

Second, violating the terms and conditions provided for by the laws on elections and referendums with respect to canvassing and campaigning during a referendum on television, radio or the press are also punishable.

The other offences concerning the infringement of electoral legislation by media outlets and journalists are as follows:

- conduct of a pre-election campaign and canvassing during a referendum, when it is prohibited by the law, as well as conduct by a person whose participation in the pre-election campaign is prohibited by federal law;
- failure to provide the right of reply (in defence of honour, dignity or business reputation) to a registered candidate prior to the termination of the elec-

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Kodeks Rossiyskoy Federatzii ob administrativnih pravonarusheniyah #195-FZ (Code on Administrative Offences of the Russian Federation) was published on 31 December 2001 in Rossiyskaya gazeta official daily and is available at:
<http://www.rg.ru/oficial/doc/codexes/APK/>

RU

her knowledge or consent, and was even filmed in her own bedroom. The recordings were sold as still pictures to a magazine and broadcast on a private TV channel on 10 April.

In its communiqué, the CNA ruled that the secret filming had breached the provisions of Article 2, paragraph 1 of Act no. 48/1992 on the activities of the audiovisual media in Romania. This Article protects personal dignity, honour and privacy and the individual's right to his or her own image. The CNA decided, in accordance with Articles 39 and 40 of the Act, to refer the case to the criminal prosecution authorities. In the CNA's view, the right to privacy was a fundamental human right, enshrined in the Constitution and the European Convention on Human Rights. It stated that "the broadcast by a television company of pictures filmed without the person's consent, whereby such pictures breach the person's privacy in their own home, is unacceptable and creates a dangerous precedent". ■

tion campaign, where the provision of such a right is obligatory.

The Code also states that officials may be held liable for infringing on the right to information. According to the Code, an unlawful refusal to provide a citizen with documents or materials which directly concern the rights and freedoms thereof of that citizen in the established procedure, failure to make such documents and materials available in due time, failure to make other information available in the cases provided for by law, and the provision of incomplete information or information known to be unreliable, shall all entail an administrative fine. Previously, offenders could be subject to civil, criminal and/or summary punishments.

A number of administrative offences listed in the Code also concern the activity of mass media and journalists. The Code enumerates the following offences:

- violating a procedure for collecting, keeping, using, or disseminating information about citizens (personal data);
- divulging information, which, under federal law, should not be divulged (except for cases when disclosure of such information is criminally punishable), by a person who received such information while carrying out his/her official or professional duties;
- producing and/or broadcasting television, video, documentaries, and feature films, as well as computer files and programs which contain subliminal messages and/or may harmfully influence someone's health;
- impeding lawful dissemination of mass media products, or imposing unlawful limitations on retail sale of an edition of a periodical;
- violating the rules of disseminating obligatory information;
- artificially impeding steady reception of radio and television broadcasts;
- producing or disseminating products of unregistered mass media as well as producing or disseminating such products after the decision to terminate or suspend the media outlet has been made in the established procedure;
- producing or disseminating mass media products without indicating the imprint thereof in the established procedure, as well as indicating incomplete imprint or an imprint known to be false;
- violating, through an advertising agent, advertising legislation (improper advertising or refusal of counter-advertising);
- displaying fascist products or symbols for the purpose of popularization of such products or symbols. ■

VACANCY

*The Institute for Information Law
of the University of Amsterdam*

has a temporary vacancy for an

EDITOR/RESEARCH ASSISTANT

The Institute for Information Law (IViR) is one of the largest research institutes in the field of information law in Europe. As an official partner of the European Audiovisual Observatory, the Institute is a major provider of content to *IRIS – Legal Observations of the European Audiovisual Observatory*, a monthly newsletter on current developments in European audiovisual law which is published by the Observatory. In addition, the Institute contributes to various other Observatory publications and activities.

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Law degree. Good knowledge of broadcasting law, copyright law and/or information law. Excellent writing, editing and communicative skills. Fluency in English; passive knowledge of French and German.

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