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Update on Signatures and Ratifications of Relevant Treaties

Tarlach McGonagle
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A number of Member States of the Council of Europe have either signed or ratified treaties of relevance to the audiovisual sector since the publication in IRIS 2002-5 of the table of signatures and ratifications of such treaties.

- On 14 May, the Netherlands became the eighth country to accede to the European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (see IRIS 2000-9: 3). Having signed this Convention on 24 January 2001, Romania proceeded to become the first country to ratify it on 26 August 2002. The Convention will enter into force upon ratification by two more countries (i.e., a total of three countries).

- On 30 May, Portugal ratified the European Convention on Transfrontier Television (which it had initially signed on 16 November 1989). It will enter into force in Portugal on 1 September of this year.

- Both the European Convention for the Protection of the Audiovisual Heritage and the Protocol thereto on the Protection of Television Productions (see IRIS 2001-9: 3) were signed by Romania and Austria on 30 May and 5 June 2002, respectively.

- The Convention on Cybercrime (see, *inter alia*, IRIS 2001-10: 3) was signed by Slovenia on 24 July and ratified by Albania on 20 June (Albania had signed the Convention on 23 November 2001).

- Greece ratified the European Convention on Cinematographic Co-production on 24 June of this year (after having originally signed it on 17 November 1995) and it will enter into force in Greece on 1 October 2002. ■

See generally the information on the signatures and ratifications of the relevant Council of Europe Conventions, available at: http://conventions.coe.int/

EN-FR

EUROPEAN UNION

European Commission: Creation of Radio Spectrum Policy Group and European Regulators Group

At the end of July 2002, the European Commission established a Radio Spectrum Policy Group and a European Regulators Group for Electronic Communications Networks and Services, both of which will assist and advise the Commission in the development of the Internal Market for the Information Society.

The Radio Spectrum Decision established a policy and legal framework for radio spectrum policy to ensure the coordination of policy approaches and harmonised conditions with regard to the availability and efficient use

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of the radio spectrum (see IRIS 2002-3: 4 and IRIS 2002-1: 5). The Decision recalls that the Commission may organise consultations in order to take cognisance of the views of involved parties. This has led to the creation of the Radio Spectrum Policy Group. The role of the Group will be to assist and advise the Commission on matters related to radio spectrum policy, such as availability, harmonisation and allocation of radio spectrum, and methods for granting rights to use the spectrum. The Group will be composed of high-level experts representing the governments of Member States and the Commission. In addition its membership will include observers. It will also engage in consultations with commercial and non-commercial stakeholders and any interested parties. The activities of the Group will be complemented by those of the Radio Spectrum Committee, which was established under the aforementioned Radio Spectrum Decision. Its task is to assist the Commission in the elaboration of binding implementing measures addressing harmonised conditions for the availability and efficient use of radio spectrum.

To ensure the consistent application in all Member States of the regulatory framework for electronic communications networks and services, which entered into force on 24 April 2002, the Commission established the European Regulators Group for Electronic Communications Networks and Services. This Group will provide an interface, and will allow cooperation, between national regulatory authorities and the Commission in a transparent manner. The Group, in which the Commission will be represented, will be composed of the heads of the national regulatory authorities of each Member State. It will consult with "market participants, consumers and end-users" (Article 6). It will maintain close cooperation with the Communications Committee established under the Framework Directive, and will ensure coordination with the Radio Spectrum Committee, the Radio Spectrum Policy Group and the "Television without Frontiers" Contact Committee. ■

Nirmala Sitompoel
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"Commission creates Radio Spectrum Policy Group and European Regulators Group", Press Release of the European Commission of 29 July 2002, IP/02/1171, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1171|0|RAPID&lg=EN&display=

DE-EN-FR

Commission Decision of 26 July 2002 establishing a Radio Spectrum Policy Group (Text with EEA relevance), Official Journal of the European Communities L 198/49, 27 July 2002, available at: http://europe.eu.int/eur-lex/en/oj/2002/l_19820020727en.html
Commission Decision of 29 July 2002 establishing the European Regulators Group for Electronic Communications Networks and Services (Text with EEA relevance), Official Journal of the European Communities L 200/38, 30 July 2002, available at: http://europe.eu.int/eur-lex/en/oj/2002/l_20020020730en.html
Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision), Official Journal of the European Communities L 108/1, 24 April 2002; Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), Official Journal of the European Communities L 108/33, 24 April 2002, both available at: http://europe.eu.int/eur-lex/en/archive/2002/l_10820020424en.html

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

European Commission: Study on Development of New Advertising Techniques

A study on the development of new advertising techniques and their regulatory implications was recently submitted to the European Commission. Prepared by Carat Crystal and Bird and Bird, the study was commissioned as part of the ongoing review of the "Television without Frontiers" Directive.

In the report, a panorama of existing advertising techniques and their regulation is followed by a similar analysis of emerging advertising techniques. In the case of the latter, particular emphasis is placed on interactive, split-screen and virtual advertising.

Devising a new regulatory framework or modifying the existing one to govern new advertising techniques is problematic, not least because of the unpredictable pace of technological change and of the adoption of these techniques. Nevertheless, the report identifies a number of principles which ought to guide any such regulatory initiatives, including: minimal regulation (limited to the achievement of the stated objectives, leaving self-regulation to the industry, where practicable); the preservation or enhancement of legal certainty; subsidiarity (the European Regulator should only intervene when matters cannot be dealt with effectively at the national level). According to the report, the general aim of the adoption or adaptation of regulations should be to strike a chord of harmony between the optimal economic development of the European media industry, on the one hand, and matters of public interest, such as consumer protection (especially minors), the safeguarding of pluralism, the promotion of cultural diversity and respect for competition rules of the Treaty, on the other.

The report calls, *inter alia*, for clarification of the provisions of the Directive which would apply to split-screen advertising and for the requirement that a clear indication be given whenever virtual advertising is used. The approaches of Member States to new advertising practices diverge to a significant extent; hence the need for greater interpretative certainty as far as the Directive is concerned. ■

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"Study on the development of new advertising techniques and their regulatory implications", Press Release of the European Commission of 7 June 2002, MEMO/02/130, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=MEMO/02/130|0|RAPID&lg=EN&display=

DE – EN – ES – FR

***"Étude sur le développement des nouvelles techniques publicitaires: Rapport final"*, Carat Crystal and Bird & Bird, April 2002, available at: http://europa.eu.int/comm/avpolicy/stat/studpdf/pub_rapportfinal.pdf**

FR

European Commission: Report on Preparation of Guidelines for State Aid/Services of General Economic Interest

The European Commission submitted a report to the recent Seville European Council on the status of work on guidelines for state aid and services of general economic interest. By way of background, following a request by the Nice European Council in December 2000, the Commission presented a report on services of general interest (COM(2001) 598 final) to the Laeken European Council one year later. The Barcelona European Council in turn requested an update on work concerning the elaboration of guidelines on state aid earlier this year. In the context

of the preparation of the instant report, the Commission was asked "to present if appropriate a proposal for a regulation on block exemption in this field".

The Commission has traditionally held that financial assistance from Member States to businesses providing general interest services does not amount to state aid according to Article 87(1) of the EC Treaty, where such assistance is designed solely to meet additional charges imposed by the state for public service reasons. Article 87(1) of the EC Treaty reads: "Save as otherwise provided in this 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." Also of relevance is Article 86(2), which reads: "Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them [...]."

This view has been to the fore in Communications from the Commission and also in the established jurisprudence of the Court of Justice of the European Communities. There are indications, however, that the emerging case-law of the Court may move in another direction. The evolution of the Court's jurisprudence – past and projected - is examined in the present report, in which the Commission recommends waiting for the outcome of certain pending cases before taking a definitive stance on whether compensation constitutes state aid, and ultimately before finalising its guidelines. As another part of the preparatory process, the Commission will also engage in consultations with experts from Member States in the autumn of this year.

It is envisaged that a final text, which will consider "the relevant case law, in particular as regards the concepts of economic activity and effects on trade, and clarify the methods for calculating compensation, notably in connection with public contracts, in order to avoid excess compensation," will be adopted by the Commission before 2003. ■

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Report to the Seville European Council on the status of work on the guidelines for state aid and services of general economic interest, European Commission: DG Competition, 2002, available at:
http://europa.eu.int/comm/competition/state_aid/others/
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

European Parliament: Report on Commission Communication on Certain Legal Aspects Relating to Cinematographic and Other Audiovisual Works

Following its consideration of the European Commission Communication on certain legal aspects relating to cinematographic and other audiovisual works of September 2001 (see IRIS 2001-9: 6), the Committee on Culture, Youth, Education, the Media and Sport (hereinafter "the Committee") of the European Parliament has proposed a Motion for a Resolution.

The proposed Resolution is wide-ranging in scope. It opens with a statement of its support for the Commission's Communication and its insistence on strict adherence to the proposed time-line. Pursuant to the Communication and the European Parliament Resolution on achieving better circulation of European films in the internal market and the candidate countries of November 2001 (see IRIS 2002-1: 6), the Committee appeals to the Commission to strive to make the free movement of audiovisual works within the Internal Market a reality by 2005.

On more specific matters, the Committee favours greater transparency in procedures governing the examination of aid to the audiovisual sector; greater clarity in the definition of State aid, and the factoring of the cultural dimension to audiovisual activities into the notion of State aid for the sector, thus resulting in beneficial flexibility. As regards the protection of heritage and the exploitation of audiovisual works, the Committee endorses the need for the compulsory legal deposit of works by Member States and calls for such initiatives to be undergirded by public support funds and complemented by, *inter alia*, the co-financing of projects for the digitisation of audiovisual archives.

The Committee also recommends that market forces be allowed to spur developments in e-cinema, albeit with the cooperation of the EU and US audiovisual industries. It suggests involvement by the Commission, the European Investment Bank and the Council in the financing of "extremely expensive digital projection equipment for European cinemas". Further related recommendations are that reduced VAT rates should apply to audiovisual cultural products and services and that the possibility of ensuring reduced rates for admission to cinemas should be explored by Member States. The Committee regrets the omission in the Commission's Communication of encouragement to Member States to offer tax breaks in order to attract investment in film production.

The Committee endorses the Commission's proposal to independently investigate the impact of cultural differences in Member States on the rating and marketing of films. In order to improve the circulation of films in the Internal Market and in the candidate countries, it urges facilitating the creation of financial institutions specialising in the audiovisual sector and the development of relevant capital risk funds. Other financial initiatives aimed at stimulating growth in the audiovisual sector are also contemplated.

In the context of the review of the "Television without Frontiers" Directive, the Committee requests a re-examination of certain definitions, such as "European work" and "independent producer". It highlights that "buy-out" clauses, which exist in certain Member States, "considerably restrict contractual freedom at producer level". It also underlines the importance of investment in film production for improving the circulation of European films in the Internal Market and in the candidate countries. ■

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Report on the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001)534 – C5-0078/2002 – 2002/2035(COS)) of 5 June 2002, Doc. No. A5-0222/2002, European Parliament Committee on Culture, Youth, Education, the Media and Sport, Rapporteur: Luckas Vander Taelen, available at:
http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+REPORT+A5-2002-0222+0+DOC+SGML+V0//EN
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NATIONAL

BROADCASTING

AT – Cross Promotion Banned by Court

Albrecht Haller
University of Vienna

According to Section 13.9 of the *Bundesgesetz über den Österreichischen Rundfunk* (Federal Act on the Austrian Broadcasting Corporation - *ORF-Gesetz, ORF-G*), advertising for radio programmes broadcast by *Österreichische Rundfunk* (Austrian Broadcasting Corporation - *ORF*) may not be shown on television channels operated by *ORF,* and vice versa, unless it concerns the contents of individual programmes.

According to the Act, which entered into force on 1 January 2002, the ban on cross promotion is designed to prevent the distortion of competition between the public service broadcaster *ORF* on the one hand and private broadcasters on the other; for as the broadcaster of several radio and TV channels, *ORF* would otherwise enjoy a considerable competitive advantage.

In mid-July 2002, *Donauwelle Radio Privat Niederösterreich GmbH*, a licence-holder under the *Privatradiogesetz* (Commercial Radio Act) and operator of "*Krone Hit Radio*", obtained a temporary injunction from the *Handelsgericht Wien* (Vienna Industrial Court), which ruled that certain advertising spots by *ORF* constituted illegal cross promotion and were therefore in breach of Section 1 of the *Bundesgesetz gegen den unlauteren Wettbewerb* (Federal Act on Unfair Competition - *UWG*). *ORF* has appealed against the temporary injunction. ■

Temporary injunction of the *Handelsgericht Wien* (Vienna Industrial Court), 15 July 2002, case no. 37 Cg 20/02y

DE

BA – Election Commission of Bosnia and Herzegovina Partly Agrees to Broadcasters' Requests

Dusan Basic
Media expert, researcher and analyst Sarajevo

The Association of Electronic Media of Bosnia and Herzegovina (AEM BiH), the association of private/commercial broadcasters, called upon the country's 150 radio and television stations to interrupt transmission for one minute on 10 July 2002, in response to the new Election Rules for 5 October Elections, which AEM claims if applied would cost them millions of Konvertible Marks (KM) in lost advertising revenue. Namely, according to Chapter 16, Media, Article 16.1 of the BiH Election Law passed by the BiH Parliament, "During the sixty (60) days prior to election day, for the competent authorities at all levels in Bosnia and Herzegovina, broadcast media shall equitably and fairly present in the media political parties, coalitions, lists of independent candidates and independent candidates and provide information about the issues related to the campaign and the electoral process.

Competent authorities at all levels shall ensure impartiality in their relations with the media during the electoral campaign."

In addition (Article 16.3), reads: "All broadcast media shall broadcast statements and information by the Election Commission of Bosnia and Herzegovina free of charge for the purpose of informing voters about all aspects of the electoral process as set forth by the Election Commission of Bosnia and Herzegovina". (See: Offical Gazette of BiH, No. 9/2002, published in May this year).

However, the Election Commission of BiH, following strong pressure from the entire media sector in the country, partly changed the rules pertaining to the obligation placed on broadcasters in the pre-election campaign for the upcoming elections.

According to the adopted changes, commercial/private broadcasters are not obliged to broadcast spots of political subjects, but if they do broadcast even one single spot, they must broadcast the spots of all requesting political parties.

The Election Commission of BiH also adopted a change regarding political debates, i.e., the 60 days period for broadcasting political debates has been reduced to 30 days before the election. ■

Press Release of 16 July 2002

EN

CY – Satellite Television Service to Be Upgraded

Andreas Christodoulou
Media Expert Cyprus

CyprusSat, the Cyprus national satellite television service, will soon undergo a substantial upgrading of both its programming and geographical coverage.

More specifically, its current programming of essentially CyBC, the national broadcasting service, output is expected to be enriched with additional informational, cultural and entertainment programming appealing mainly to overseas viewers – primarily overseas Cypriot communities.

As regards *CyprusSat's* geographical reach it is expected to expand considerably during 2003 in order to cover the continents of North America and Australia, in addition to Europe, where the service has been in operation since the early 1990s *via* the Sirius system of satellites.

These developments are the result of a recent Cyprus Council of Ministers' decision (31 July 2002) which has, *inter alia*, allocated an amount of CYP 650.000 (about EUR 1.100.000 Euros) annually for the improvement of *CyprusSat* programming.

The Council of Ministers has also decided to give the 'green light' to negotiations with satellite programme providers in North America and Australia for the inclusion of *CyprusSat* programmes in their overseas menus. For this purpose the Cyprus Government has set aside CYP 1.350.000 (about EUR 2.350.000) for 2003.

The expansion in geographical coverage will give the opportunity to sizeable Cypriot communities in the US, Canada and Australia to have instant access to the latest Cyprus news, economic and cultural developments as well as to entertainment programming. The improved programming also aims at establishing two-way communication between communities of overseas Cypriots with Cyprus. ■

Council of Ministers decision of July 31, 2002, Number 56.219.

GR

DE – Surreptitious Advertising Acquittal Quashed

The *Oberlandesgericht Celle* (Celle High Court of Appeal - *OLG*) recently quashed the decision by the *Amtsgericht Hannover* (Hannover District Court - *AG*) to acquit "Big Brother" producer *Endemol Entertainment Productions GmbH (Endemol)* on the charge of surreptitious advertising. It referred the case for review.

The *Niedersächsische Landesmedienanstalt* (Lower Saxony Regional Media Authority -*NLM*) had fined *Endemol* because its then managing director had deliberately broadcast surreptitious advertising. During the live broadcast in question by *RTL Television GmbH (RTL)*, advertising rules had been broken when, following a telephone call with the manufac-

turer, the programme presenter had repeatedly referred to a particular caravan, naming the manufacturer, who had provided the caravan free of charge (see IRIS 2001-4: 6).

The *OLG* considered in particular whether *Endemol*, as the programme producer, could be treated as a broadcaster in the sense of Article 49 of the *Rundfunkstaatsvertrag* (Agreement between Federal States on Broadcasting - *RStV*) and therefore be guilty of breaching the ban on surreptitious advertising contained in Article 7.6.1 of the *RStV* in connection with No.9 of the *Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring im Fernsehen* (Common Guidelines for the Regional Media Authorities on Advertising, the Separation of Advertising and Programme Material and Television Sponsorship) of 10 February 2000. Concerning this question, the *OLG* ruled that the concept of broadcaster as mentioned in Article 49 of the *RStV* should be interpreted broadly so as to include the programme producer as well as the actual broadcasting company. The decisive factor here, as deduced from the case-law of the *Bundesverfassungsgericht* (Federal Constitutional Court), was whether the producer had the authority to determine the content of the programme and when it was broadcast, rather than whether it was authorised and licensed in accordance with the *RStV*. The *OLG* criticised the *AG* for failing to offer sufficient grounds on matters including the authority held by *RTL* and *Endemol's* potential influence on the programme's content.

Even if *Endemol* could not be described as the "broadcaster", the *OLG* indicated that it had the legal status of a commissioned body under the terms of Section 9.1.2 of the *Gesetz über Ordnungswidrigkeiten* (Administrative Offences Act - *OWiG*). As such, it could also be responsible under broadcasting law for the content of broadcast programmes. In contrast to the *AG's* view, the *OLG* thought that the *OWiG's* definition and system of laws could certainly be interpreted in such a way that the commissioned body described in the aforementioned provision could be a legal rather than a natural person. The *AG* therefore now had to examine whether *Endemol* had the relevant level of responsibility that was the determining factor in this case. To this end, it had to assess whether *Endemol* had been able, on its own initiative and without seeking approval from elsewhere, to take the measures required to prevent the offence taking place.

The *OLG* also referred back to the *AG* the question of whether surreptitious advertising had actually taken place and whether *Endemol* had been party to a breach by *RTL* of the ban on surreptitious advertising. ■

Peter Strothmann
Institute of European Media Law (EMR), Saarbrücken / Brussels

Judgment of 23 May 2002, case no. 222 Ss 34/02 (Owi)

DE

DE – Youth Protection Rulings

In a ruling published at the end of June 2002, the *Verwaltungsgericht Berlin* (Berlin Administrative Court - *VG Berlin*) gave its opinion on, *inter alia*, the expertise and pluralist structure of the *Gemeinsame Stelle Jugendschutz und Programm der Landesmedienanstalten* (Joint Body for Youth Protection and Programmes of the Regional Media Authorities - *GSJP*), the *Medienrat* (Media Council) of the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Media Authority - *MABB*) and the *Freiwillige Selbstkontrolle Fernsehen* (Voluntary Self-Regulatory Authority for Television - *FSF*). The case concerned an application for the annulment of two decisions by the *MABB*, in which it had refused to grant special permission for an edited version of the film "Saving Private Ryan" to be broadcast at 8pm and 9pm respectively. Whereas in its report the *FSF* concluded that the edited film could be shown at 8pm, the *GSJP* decided that it should not be broadcast either at 8pm or at 9pm. The *MABB* Media Council, which itself saw no reason why the film should not be shown at 8pm, decided, "for the sake of solidarity with the other regional media authorities", to go along with the *GSJP's* verdict. The Director of the *MABB* signed the relevant decisions.

The *VG Berlin*, quashing both decisions, ordered the *MABB* to review the plaintiff's application, bearing in mind the Court's opinion. The decisions were technically unlawful since they had been taken by the *MABB* Media Council rather than the *MABB* Director. The Court advised the *MABB* Director to base his decision on expert, independent advice from a pluralistic source. A report by the *FSF* would be ideal for this purpose, since the *FSF* was well informed, independent and had a pluralistic structure. The views of the Media Council and *GSJP* might also be sought, although the Court had reservations over whether their opinion-forming process and structure were truly pluralistic and whether they had the necessary expertise. They would only be in a position to point out flaws in the *FSF's* report, in which case the person making the final decision would have to seek further advice. In any case, the *MABB* Director would not be in a position to deviate from the *FSF's* assessment purely on the basis of either the Media Council's opinion or a recommendation by the *GSJP*. ■

Carmen Palzer
Institute of European Media Law (EMR), Saarbrücken / Brussels

***Verwaltungsgericht Berlin* (Berlin Administrative Court), judgment of 27 June 2002, case no.: VG 27 A 398.01**

DE

DE – Consequences of Cable Digitisation for Analogue Channels Under Discussion

At the end of July, the *Verwaltungsgericht Berlin* (Berlin Administrative Court - *VG*) issued an important decision concerning the switch-over to digital broadcasting. Its ruling contains guidelines on how users might be expected to keep up with technical advances in relation to the switch from analogue to digital transmission.

The dispute between the European cultural channel *ARTE* and the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Media Authority - *MABB*) concerned the broadcaster's right to analogue transmission capacity within the broadband cable network for its afternoon programmes which were shown from 2pm onwards and which had also been broadcast digitally via satellite for some time. The cable capacity in question was currently shared between the *Kinderkanal* (children's channel) and *ARTE*. Since the children's programmes were broadcast until 7pm, *ARTE* could only be received in analogue form after 7pm. The cultural channel's afternoon programmes, which were broadcast on another cable channel reserved exclusively for digital transmission, could only be received by viewers equipped with a digital receiver.

Referring to the *Staatsvertrag zwischen Berlin und Brandenburg über die Zusammenarbeit im Bereich des Rundfunks* (Inter-State Agreement between Berlin and Brandenburg concerning co-operation in the broadcasting sector - *MStV*), the *VG* considered *ARTE* to be one of the public service channels organised on the basis of provisions of law or Inter-State Agreement which should be given priority in terms of transmission capacity. It was also of the view that the technical innovation of digital transmission should not mean that the current overwhelming majority of "analogue users" should be forced to update their equipment in order to receive all such priority channels. *ARTE* should therefore be broadcast in analogue form via cable throughout the day. The *MABB* said that it would appeal. ■

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***Verwaltungsgericht Berlin* (Berlin Administrative Court), judgment of 25 July 2002, case no.: 27 A 87.01 und 86.02**

DE

FR – CSA Calls for a Stop to Pornographic Programmes on Television

Amélie Blocman
Légipresse

By virtue of Article 15 of the Act of 30 September 1986, as amended, "the *Conseil supérieur de l'audiovisuel* (the audiovisual regulatory body - CSA) shall ensure the protection of children and young people and respect for human dignity in the programmes made available to the public by audiovisual communication services". In doing so, "it shall ensure that programmes likely to be harmful to the physical, mental or moral development of minors shall not be made available to the public by a sound or television broadcasting service, except where there is assurance, by the choice of the time the programme is broadcast or by using any appropriate technical process, that minors are not normally likely to hear or to see them". In conjunction with the terrestrially-broadcast, cable and satellite channels, the CSA decided on a classification system of programmes into various categories, each indicated by a symbol; some of the categories carry restrictions as to the time of day when they may be shown. The most restricted category is category V, which covers "cinematographic works that may not be shown to young people under the age of 18, and programmes suitable only for an informed, adult public which, more particularly where they are obscene, or are likely to be harmful to the physical, mental or moral development of young people under the age of 18." Since its concession was granted in 1984, Canal + has been the only encrypted terrestrially-broadcast channel authorised to broadcast pornographic programmes, and only then between midnight and five o'clock in the morning. On 2 July, having noted a substantial increase in the number of broadcasts in category V (more than 100 broadcasts of X-rated films each month on Canal + and on several cable and satellite channels, not including pay-per-view services) and in the light of recent audience figures indicating that a not inconsiderable number of minors are exposed to them, the CSA recommended that pornographic broadcasts on French television should stop. It called on the public authorities to transpose Article 22 of the Television Without Frontiers Directive into French law so that Article 15 of the 1986 Act would specifically ban "programmes including scenes of pornography or gratuitous violence". On 24 July, a Member of Parliament, Christine Boutin, tabled a bill on this.

The CSA is also considering changing the symbols used, to make them clearer and more legible. New pictograms, based on a classification by age rather than the present shapes and colours, have been presented to the national channels and associations concerned with the protection of young people, and they, like viewers, have been asked for their reactions to the new proposals. The National Union of Family Associations (UNAF) has already written to all Members of Parliament asking for their active support in implementing these two CSA resolutions. ■

CSA press release no. 498 of 2 July 2002, available at the following address:
http://www.csa.fr/actualite/communiques/communiques_detail.php?id=8902

FR

GB – Parliamentary Committees Critical of Draft Communications Bill

Tony Prosser
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The UK Government has published a draft Communications Bill to reform fundamentally the regulation of broadcasting and telecommunications and to liberalise ownership rules (see IRIS 2002-6: 9). As part of the consultation process, the Bill has been examined by two Parliamentary Committees drawn from both Houses of Parliament.

The first report was that of the Joint Committee on Human Rights. The Committee considered that most of the Bill's provisions are unlikely to cause problems in respect of human rights; however some will require revision to provide adequate safeguards. Most seriously, the proposed power for the new Office of Communications (OFCOM) to impose penalties on, and revoke the licences of, broadcasters carries a serious risk of breaching Article 6 of the European Convention on Human Rights because of the lack of procedural protections or of an independent decision-maker. The provisions might also breach Article 10 as it would not be shown clearly that regulatory action was "necessary in a democratic society", and similarly might breach Article 1 of Protocol 1, as it would be unlikely that a fair balance between the general interest and the rights of licence-holders could be shown. The Government has stated that it will introduce fuller rights of appeal during the passage of the Bill in an attempt to remedy this problem.

Other problems of compliance with the Convention might arise in relation to the regulator's proposed power to require the provision of information; the adequacy of safeguards for the Secretary of State's power to intervene on public safety, public health or national security grounds; the regulator's power to require the broadcasting of corrections or apologies and that of the Secretary of State to require the broadcasting of announcements; restrictions on the ability of religious groups to hold licences; the prohibition on political advertising and powers to search for unlicensed television receivers.

The draft Bill was also examined by a Joint Committee of both Houses chaired by Lord Puttnam, the (former) film producer. The most well-publicised recommendation was that the proposed lifting of the current ban on non-EEA ownership of UK broadcasters be postponed until after the new regulator has been established and has had the opportunity to undertake a review of the programme supply market. The Committee also made 147 other recommendations for improving the Bill, although these did not challenge its fundamentals, with the Chairman expressing its purpose as being "to make a good Bill better". The recommendations cover: the legal framework for the new regulator, including amended legal duties and further encouragement for self-regulation; economic regulation, including telecommunications and spectrum management; media ownership, including restrictions on concentration and cross-media ownership; and content regulation, including the remits and regulation of public service broadcasters. ■

"Draft Communications Bill", House of Lords and House of Commons Joint Committee on Human Rights, Nineteenth Report of Session 2001-02, HL Paper No 149, HC 1102, available at:
http://www.publications.parliament.uk/pa/jt200102/jtselect/jtrights/149/149.pdf
"Draft Communications Bill Volume I - Report", House of Lords and House of Commons Joint Committee on the Draft Communications Bill, HL Paper 169-I, HC 876-I, 25 July 2002, available at:
http://www.publications.parliament.uk/pa/jt200102/jtselect/jtcom/169/169.pdf
For other responses to the Consultation Process on the Draft Communications Bill, see:
http://www.communicationswhitepaper.gov.uk/pdf/index_responses_a-c.html

GR – New National Radio and Television Council

Alexandros Economou
Barrister, Legal Adviser to the Greek National Radio and Television Council

After a long waiting period, Act 2683/2000 on the *Ethniko Symvoulio Radiotileorassis* (National Radio and Television Council – NRTC (see IRIS 2001-1: 9)) has come into force, with the appointment by the Minister of the Press and the Mass Media of seven members to form the new board of the NRTC. The new members have been selected unanimously by the *Diaskepsi ton Proedron* (Conference of Presidents), a special body of the Greek Parliament (chaired by the President) whose members represent all the political parties, and which is responsible for organising Parliament's work and supervising the independent authorities.

The NRTC's Chairman is to be Mr Ioannis Laskaridis, former Vice-President of the *Arios Pagos* (Supreme Court in civil matters), and its Vice-Chairman Mr Dimitris Charalambis, a professor in the Department of Communications and Mass Media at the University of Athens. The other five posts have been filled by two journalists, two legal experts (one of whom is a university professor) and a professor of the University of Athens (Department of Humanities).

This new method of appointing the members of the NRTC is just one of the innovations in its legal scheme, introduced by both the recent amendment of the Greek Constitution (6 April 2001) and the above-mentioned Act.

The Constitution states that the NRTC constitutes an "independent authority" whose members are appointed for a specific term of office and enjoy personal and functional independence (Art. 101A). This gives the NRTC a close relationship with the Parliament, under whose supervision it operates. The NRTC alone is competent to supervise audiovisual companies and impose fines (Art. 15(2)). Act 2683/2000 also gives it authority to grant broadcasting licences and prescribe any decisions of a non-regulatory nature; these have until now been the responsibility of the Minister of the Press and the Mass Media. However, the same text specifically deprives the NRTC of any regulatory and advisory authority, which could constitute a significant handicap in the deployment of regulatory powers that this type of authority has at the European level (Art. 10(1)).

Attention is drawn to the NRTC's preponderant role in the application of the recent Act 3021/2002 of 19 June 2002 "on restrictions in the conclusion of public contracts by persons with a stake in mass media companies"; it issues the "certificate of transparency" once it has ensured (using its special registers) that the private party concluding a public contract is not affected by any of the incompatibilities determined by the Act (particularly as regards holding a stake in an audiovisual company).

Lastly, the NRTC will have to overcome a good deal of infrastructural problems (lack of staff, inadequate building and technical resources) before it can fully exercise its authority in an audiovisual sector affected by delay in the application of the regulations. ■

Act 2683/2000 on the *Ethniko Symvoulio Radiotileorassis* (National Radio and Television Council)
EL

HU – Broadcasting Act Amended

Márk Lengyel
Directorate of Strategy, Office of the National Radio and Television Commission

Following a preparatory process lasting nearly four years, the Parliament of the Republic of Hungary has approved the Bill on the Amendment of Act No. I of 1996 on Radio and Television Services ("Broadcasting Act"). The amendment concerns issues aimed at achieving full harmonisation of the Hungarian Broadcasting Act with the relevant EU legislation and with the European Convention on Transfrontier Television as recently amended by a protocol.

The amendment has been enacted following the fourth submission of the Bill, which according to the provisions of the Constitution of Hungary required a two-thirds majority of votes in the Parliament. The first three times the issue of the Bill was linked in the political debates with questions regarding the participation of political parties in the governing bodies of the public service broadcasters and the approval of the Bill was hindered by the lack of consensus on this. Nevertheless during the debates on the Bill no criticism was expressed by any political party regarding its aims or its merits.

The adopted amendment contains a series of changes to the Hungarian broadcasting regulation in force. It re-defines the scope of the Broadcasting Act by a set of very detailed criteria in accordance with the jurisdiction rules of Directive 89/552/EEC as amended by Directive 97/36/EC and the Protocol amending the European Convention on Transfrontier Television.

New definitions such as "European work" and "tele-shopping" are introduced, and already existing notions – *e.g.* "broadcasting" or "advertisement" – are re-defined in accordance with EU legislation.

Based on the rules of the EU Directive, the amendment *inter alia* stipulates that by the date of the accession of Hungary to the EU, television broadcasters will have to reserve the majority of their transmission time for European works. Quotas have also been defined for programmes produced originally in the Hungarian language.

The new act brings fundamental changes in the rules for the protection of minors, introducing a sophisticated rating system. This consists of five categories of programmes determined on the basis of suggested age limits of their audience and suggested parental supervision. Broadcasters will be obliged to classify their programmes and indicate clearly in a uniform way those containing elements harmful to children. The detailed rules for classification and indication will be drawn up in the form of guidelines issued by the *Országos Rádió és Televízió Testület* (ORTT, National Radio and Television Commission, the independent regulatory authority for the media).

The amendment also introduces restrictions on the acquisition of exclusive rights for television coverage of events considered as having major importance for society. The list of these events will be drawn up and published in a government decree with the prior consent of the ORTT.

The recently adopted Act also replaces some of the provisions of the Broadcasting Act relating to advertising, tele-shopping and sponsorship in order to achieve full accord with the relevant rules of the EU directive.

The overwhelming majority of the provisions introduced by the new Act will enter into force on 15 October 2002. ■

Act No. XX of 2002 on the amendment of Act I of 1996 on Radio and Television Broadcasting for the purpose of harmonisation with EU law. *Magyar Közlöny* (Official Journal) No. 99 of 2002
HU

IT – Project on Dominant Positions in the Television Sector

Maja Cappello
Autorità per le Garanzie nelle Comunicazioni

On 3 July 2002, the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority - AGCOM) started a project with the aim of analysing the distribution of financial resources in the Italian broadcasting sector during the period 1998-2000 (*Analisi della distribuzione delle risorse economiche del settore televisivo nel triennio 1998-2000*, Deliberation n. 212/02/CONS, in *Gazzetta Ufficiale* of 10 August 2002, n. 187). The analysis will consider a survey based on a decision adopted by AGCOM on 13 June 2000 concerning the verification of actual and possible future developments in the television broadcasting sector, from the point of view of the safeguarding of competition and pluralism. This makes particular reference to access to production factors, the number of enterprises, their dimension and audience and also takes account of the perspectives offered by multimedia and digital technologies. The results of the verifications made by the *Dipartimento Vigilanza e Controllo* (Monitoring and Control Department of AGCOM) may allow it to be presumed that the concentration thresholds established by the Communications Act (*Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo*, Act of 31 July 1997, no. 249, in *Gazzetta Ufficiale* of 31 July 1997, no. 177) have not been respected by some national broadcasters, which is what this project is going to prove. ■

Deliberation n. 212/02/CONS of 3 July 2002, *Analisi della distribuzione delle risorse economiche del settore televisivo nel triennio 1998-2000*, available at: http://www.agcom.it/provv/d_212_02_CONS.htm
Deliberation n. 365/00/CONS of 13 June 2000, *Accertamento della sussistenza di posizioni dominanti ai sensi dell'articolo 2, comma 9, della legge n. 249/97*, available at: http://www.agcom.it/provv/D365_00_CONS.htm

IT

LT – Competition among Cable-TV-Operators

Viktoras Popandopula
Radio and Television Commission, Vilnius

The Radio and Television Commission of Lithuania (RTCL), which licenses and controls the activities of all private radio and television broadcasters, adopted a decision to prepare and approve the encrypting procedure for Cable TV and multichannel micro-wave distribution systems (MMDS – digital terrestrial broadcasting) after evaluating the economic and legal situation.

Due to historical circumstances, in Vilnius and Kaunas – the two biggest towns in Lithuania – a few cable TV operators are acting without competing among themselves, as they cover different geographic territories. MMDS-operators, who provide the same services, are the only competitive alternatives, however due to technological peculiarities they can offer just a limited variety of programmes.

At present MMDS operators are re-broadcasting unencrypted TV programmes, which annoys Cable TV operators, who say that when a signal is not encrypted and the number of MMDS antennas cannot be inspected, favourable conditions for the unsanctioned connection to the MMDS network are created. According to the cable TV operators the share of illegal MMDS subscribers amounts to 40 or 70 per cent of all legal Cable TV and MMDS subscribers. This situation harms both Cable TV and MMDS operators on the one hand, and holders of copyright and neighbouring rights on the other.

According to the MMDS operators the extent of piracy is not as bad and the phenomenon is successfully dealt with, sometimes involving even legal officials. So according to them there is no necessity to encrypt the signal; otherwise this would make their service more expensive and hinder them from competing with Cable TV operators.

After the above mentioned decision was adopted, a MMDS operator, which provides services in Vilnius and Vilnius region, applied to the Commission to initiate a tender for a Cable TV licence, covering the whole town of Vilnius via fibre-optic cable to enable him to compete with the already licensed Cable TV operators operating in different parts of the town. The RTCL invited a tender for the Cable TV licence, covering the whole town of Vilnius, although the Cable TV operators acting in Vilnius asked the Commission to cancel or at least suspend the tender and allow them to expand their networks up to the town limits.

At present the decision of the RTCL reads that Cable TV operators can apply for expanding their licensed territories up to the town limits, and the tender for the whole town territory will take place in November. ■

Radio and Television Commission of Lithuania

LT

NL – No New Entrants in Dutch Public Broadcasting System until 2005

The Dutch Secretary of State for Education, Culture and Science was right to reject the request of the broadcasting organisation, *DeNieuwe Omroep*, for a provisional accreditation to enter the Dutch public broadcasting system. That was the judgment of the *Afdeling Bestuursrechtspraak Raad van State* (the highest instance for appeal in cases of administrative law - *ABRvS*) on 24 July 2002.

The Dutch public broadcasting system is formed by private organisations that are publicly financed. In principle, every five years, new parties can enter the public broadcasting system if they fulfil the conditions laid down in the *Mediawet* (Media Act – *Mw*). *DeNieuwe Omroep* had requested a provisional accreditation for public broadcasting in 2000. The Secretary of State, after being advised by several advisory bodies, concluded that the policy plan did not fulfil the condition laid down in Section 37a of the Media Act. Section 37a states that the policy plan must show "that the programme service which the broadcasting association intends to provide differs, in terms of both content and scope, from programme services provided by the broadcasting associations which have obtained an accreditation to such an extent that it increases the diversity of national broadcasting and thereby imparts fresh momentum to the accomplishment of the tasks assigned to national broadcasting." The advisory bodies concluded, after comparing the intended programme schedule with the programme schedule of the accredited public broadcasting organisations, that the only distinction between *DeNieuwe Omroep* and the accredited organisations could lie in the new approach to subjects proposed by *DeNieuwe Omroep*. In terms of both content and scope, *DeNieuwe Omroep*'s intended programme schedule did not differ substantively from the past and future programme offer of the

accredited organisations. The Secretary of State adopted the conclusions of the advisory bodies and rejected *DeNieuwe Omroep*'s request on this basis.

DeNieuwe Omroep appealed this decision on the grounds that the Secretary of State had not interpreted Section 37a Media Act correctly. It argued that he should have interpreted Section 37a Media Act in line with Article 7 of the Dutch Constitution, in which freedom of expression is guaranteed. Article 7(2) of the Constitution states: "[R]ules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast." On this ground, the broadcaster submitted, the examination of the intended programme schedule should be incidental and the scrupulous examination that was undertaken by the advisory organs would amount to unlawful censorship. Besides, *DeNieuwe Omroep*'s line of argumentation continued, it would be inconceivable that any new organisations could enter the public broadcasting system if their intended programme schedule would have to be compared to the past, present and future programming of the accredited organisations. The next opportunity to enter the public broadcasting system will be in 2005.

The *ABRvS* ruled on appeal that Section 37a *Mw* gives the Secretary of State a certain amount of decisional discretion. This discretion should be seen in light of Article 7(2) of the Constitution, which does not prevent the application of a concrete content test to judge the intended programme schedule on its contribution to the diversity or innovation of the public broadcasting system. The Secretary of State could therefore rightfully adopt the conclusion of the advisory bodies. ■

Wilfred Steenbruggen
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***DeNieuwe Omroep/Staatssecretaris Onderwijs, Cultuur & Wetenschappen, Afdeling Bestuursrechtspraak Raad van State*, 24 July 2002, LJN no. AE5780, Case no. 200201911/1, available at:**
http://www.rechtspraak.nl/uitspraak/show_detail.asp?ui_id=36773

NL

RO – Occult TV Ban

On 25 July 2002, the *Consiliul National al Audiovizualului* (National Audiovisual Council – *CNA*) advised all broadcasters that they should no longer allow magicians or occult phenomena to be portrayed in their programmes. The *CNA*'s warning pointed out that the *Legea audiovizualului nr. 504* (Act no. 504 on the activities of the electronic media), which entered into force on 22 July 2002, prohibited the direct or indirect promotion of occult practices. On the basis of the Act, the *CNA* demanded that any advertising for magic and any programme material that might be seen to advocate occult practices be immediately withdrawn. The *CNA* communiqué stated that failure to comply with these provisions would be penalised with fines ranging between ROL 50 and 500 million. ■

Mariana Stoican
Radio Romania International

***Communiqué of the Consiliul National al Audiovizualului* (National Audiovisual Council – *CNA*), 25 July 2002**

RO

RU – Changes in Election Law Concern Broadcast Media

The Federal Statute "On basic guarantees of electoral rights and the right to participate in a referendum of the citizens of the Russian Federation" entered into force on 22 July 2002 (see also IRIS 1999-6: 10). This Act serves as the basis for the whole system of election law in Russia.

The act distinguishes between two kinds of information. The first one is election propaganda, which can be disseminated only by candidates and parties. The second one is information on the course of campaigns, which the mass media can disseminate.

The Act introduced a list of actions considered as election propaganda if carried out during a campaign period. Among them are appeals to vote for or against a candidate or a party, distribution of information with an obvious prevalence of information about a candidate, party, election block in combination with any comments, expressions of preference concerning somebody from among the candidates, parties, election blocks, description of the possible consequences of the election of a candidate or party, etc.

The Act uses such vague statements as formation of a positive or a negative attitude of voters toward the candidate or the party as a kind of election propaganda. The list of such actions is open-ended and states that any actions, aimed to induce or inducing voters to vote for a candidate or party or against them may be declared as election propaganda. Journalists are not allowed to carry out any of the listed actions.

Election propaganda on TV broadcasting channels begins 30 days prior to voting day.

The all-Russian and regional state-owned TV broadcasting organisations are obliged to provide free air time to the candidates, parties and election blocks at elections to the federal bodies of state power. The regional state-owned TV broadcasting organisations are obliged to provide free airtime to the candidates, parties and election blocks at elections to bodies of the state power of the subjects (regions) of the Russian Federation. The municipal-owned TV broadcasting organisations are obliged to provide free airtime to the candidates, parties and election blocks at elections to institutions of local self-government.

Not less than half of the total amount of free airtime (previously it was only one third) shall be provided to the candidates, parties and election blocks for a joint use of it in the form of debates or roundtables only.

The state-owned and municipal-owned broadcasting organisations are obliged to reserve airtime to be provided for payment. The amount and conditions of payment should be uniform for all candidates, parties and election blocks. The total amount of reserved airtime for money shall be equal or exceed (but no more than twice) the established total length of the free airtime.

In regard to results of public opinion polls the Act prohibits its distribution in the mass media or Internet during the last five days before the voting day. Previously this term was of three days. ■

Natalie Boudarina,
Moscow Media Law and Policy Center

***Federalniy zakon "Ob osnovnikh garantiyakh izbiratelnikh prav i prava na uchastie v referendume grazhdan Rossiyskoi Federatsii"* (The Federal Act On basic guarantees of electoral rights and the right to participate in a referendum of the citizens of the Russian Federation) #67-FZ of 12 June 2002 was officially published in *Rossiyskaya gazeta* daily on 15 June 2002 and is available at:**
http://www.rg.ru/oficial/doc/federal_zak/67-fz_con.shtm

RU

TR – Media Act Disputed

Şebnem Bilget
Nihat Çaylak
Supreme Radio and Television Council, International Relations Section, Ankara
Peter Strothmann
Institute of European Media Law (EMR), Saarbrücken / Brussels

On 15 May 2002, the Parliament adopted Act no. 4756 amending the fundamental Act no. 3984 of 20 April 1994 on the organisation and broadcasting of radio stations and television channels. The amendments provide, *inter alia*, that the supervisory body *Radyo Ve Televizyon Üst Kurulu* (Supreme Radio and Television Council - *RTÜK*) should include representatives of the National Security Council, the State Supreme Education Council (*YÖK*), the Prime Minister and MPs.

According to the new Act, Internet services will also be monitored by the *RTÜK*. Internet Service Providers can therefore be obliged to have websites officially registered and to submit printouts of websites for approval. Penalties for breaches of content-related regulations (libellous remarks, dissemination of false information) have been laid down (fines of up to EUR 210,000). The previous ban on media companies tendering for government contracts has been lifted and the regulatory framework for media concentration relaxed. Furthermore, broadcasting frequencies will in future be assigned by the Telecommunications Council.

On 21 May 2002, the President referred the Act to the Constitutional Court for examination, since he thought its use of vague legal concepts was unconstitutional.

In an interim ruling at the end of June 2002, the Constitutional Court decided, following a complaint from several MPs, that the amendments concerning the demands on Internet services were not unconstitutional. Pending its final decision, the Court revoked the provisions on media concentration, the election of the *RTÜK*, the term of office of its members and the right of reply.

On 3 August 2002, Act no. 4771 was also passed, containing further amendments to Act no. 3984. A new provision was added to Article 4.1 of Act no. 3984, stating that radio and television programmes in the various languages and dialects traditionally spoken by Turkish citizens may be broadcast as long as they do not infringe the basic constitutional principles of the Turkish Republic nor the inseparable integrity of the territory and nation. Arrangements for monitoring and the principles for transmitting such programmes are to be laid down by decree.

The programming principles set out in Article 4.2 of Act no. 3984 are supplemented by provisions concerning the protection of privacy and the need to avoid promoting the use of violence or incitement to racial hatred.

The retransmission of radio and TV programmes is permitted under an amendment to Article 26.1 of Act no. 3984, provided it does not infringe the principles and requirements set out in the Act. ■

Act no. 4756 of 15 May 2002, available at:
www.tbmm.gov.tr/kanunlar/k4756.html
Act no. 4771 of 3 August 2002, available at:
http://www.tbmm.gov.tr/kanunlar/k4771.html
TR

YU – Broadcasting Act of Serbia Adopted

The National Assembly of the Republic of Serbia adopted the Law on Broadcasting at a session held on 18 July 2002. The Law was promulgated and published on 19 July and came into force on 27 of the same month after a lengthy procedure (IRIS 2001-3: 13 und IRIS 2001-6: 10).

Serbian Law on Broadcasting (SLB) has nine chapters: Basic Provisions, Broadcasting Agency of the Republic, Broadcasting License, General Programming Standards, Public Service Broadcasting, Prevention of Illicit Media Concentration, Advertising and Sponsorship, Penal Provisions and Transitory and Final Provisions. The most detailed parts are the ones on the establishment, competences and operation of the Broadcasting Agency and its only body, the Broadcasting Council, and on Public Service Broadcasting. The reason is quite simple – in these parts a completely new type of regulator has been introduced into the Serbian legal system and a full transition from state broadcasters to public service ones has been provided.

The basic provisions contain the principles of broadcasting regulation, definitions and a provision on cooperation between broadcasting and telecommunications regulators. The Broadcasting Agency (BA) is an independent regulatory authority charged with the adoption of development strategies, passing of detailed regulation on various aspects of broadcasting activities (programming, technical, advertising and sponsorship codes etc), issuing licenses, supervising the work of broadcasters and the introduction of measures against broadcasters that are not operating according to existing regulation. The BA is authorised to deliberate on submissions from viewers and/or competing broadcasters, and especially to have regard for the best interests of children, to protect copyright and neighbouring rights in broadcasting and to take measures to prevent "hate speech". The only BA decision-making body is the Broadcasting Council (BC), which consists of 9 members, preferably experts in broadcasting or related fields, elected by the Parliament upon the proposals of various organizations. The term of office of the BC is six years, but a third of its members are changed every two years. Politicians and persons involved in broadcasting and similar activities are not eligible to be members of the BC due to potential conflict of interests and/or political influence. The BA is financed by the broadcasting fee, paid by the broadcasters after the license is issued to them. A broadcasting license may only be issued to domestic entities, and the foreign share in a broadcasting company is restricted to 49%. State and political organizations, as well as enterprises owned by them, may not be holders of a license. A license is fully non-transferrable and non-alienable. The licenses are issued at a public tender, and the duration is set at 8 years, with the possibility of extension. The Chapter on General Programming Standards contains a few general provisions that shall be developed in detail by the BA codes of conduct. Public service broadcasting is entrusted to the Broadcasting Institution of Serbia and the Broadcasting Institution of Vojvodina. These institutions are financed by a licence fee, and have special programming duties and responsibilities. The management of both institutions is appointed by the BA, following a public tender. Media concentration is defined as concentration of ownership in media, and concentration that enables a media owner to have a "prevailing influence on public opinion" is deemed illegal. There are, however, some situations expressly stated in the legal text, in which it is presumed that the "prevailing influence" exists. Advertising and sponsorship provisions follow the provisions of the existing European Convention on Transfrontier Television (ECTT) version. Penal provisions define offences in the area of broadcasting, and transitory and

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final provisions provide deadlines for establishing the BA and transforming the state radio and TV into public broadcasting institutions.

The implementation of the new Law on Broadcasting shall start in September, through a process of establishing the BA. After that, all existing broadcasters in Serbia shall, in a transitional period of two years, either obtain new licenses according to the new regulations or shut down. Given the fact that over 1000 broadcasters currently exist, and there is probably only room for some 300, next year will presumably be the year of numerous shut downs or mergers of broadcasters in Serbia. ■

Broadcasting Act of Serbia of 19 July 2002
SR

FILM

CH – Federal Act on Cinematographic Culture and Production Comes into Force

Patrice Aubry
Lawyer (Geneva)

The Federal Act on cinematographic culture and production of 14 December 2001 (Cinema Act - LCin) came into force on 1 August 2002 (see IRIS 2002-2: 12). The Act has now been supplemented by the Cinema Order (OCin), finalised on 3 July 2002 by the Swiss Federal Council.

The OCin governs promotion of the diversity of the offer of films shown in public in Switzerland. The *Office fédéral de la culture* (Swiss Ministry of Culture - OFC) is responsible for carrying out an annual evaluation of the diversity of the cinematographic offer. A number of representatives of the cinematographic branch, particularly distribution and projection companies, will be called upon to comment on the OFC's evaluations. If the evaluations reveal a reduction in the diversity of the cinematographic offer in a specific region of Switzerland, the OFC will invite the distribution and projection companies in that region to re-establish diversity. The OFC will then carry out another evaluation in order to ensure that diversity has indeed been re-established.

If the second evaluation indicates that the diversity of the offer has not increased substantially in the region concerned, the OFC may ask the *Département fédéral de l'intérieur* (Swiss Home Office) to introduce an incentive tax. As the actual diversity of what is on offer depends in the first instance on the cinematographic branch itself, levying a tax can only be a last-ditch attempt to re-establish a situation in keeping with the aims of the Cinema Act. The OCin lays down a certain number of additional rules in this respect, providing more particularly that the amount of the tax, which may not exceed CHF 2 per ticket, would be determined on the basis of foreseeable ticket sales and the cost of implementing the measures intended to re-establish diversity. The tax may be levied until such time as diversity has been re-established, but for no more than three consecutive years. The distribution and projection companies may however be exempt from payment of the tax if they undertake formally to make a specific contribution to the diversity of the offer of films shown in public.

The LCin requires the Swiss distribution and projection companies to be listed in a public register kept by the OFC. Production, distribution and projection companies must also communicate regularly the titles and technical data of films, together with operational results. The *Office fédéral de la statistique* (Swiss Statistics Office) is responsible for analysing the relevant data for the OFC in order to evaluate the diversity of what is on offer. ■

Federal Law of 14 December 2001 on cinematographic culture and production (Cinema Act - LCin), published in the gazette of federal legislation *(Recueil Officiel des lois fédérales)*, no. 29 of 23 July 2002, page 1904 et seq.; available at the following addresses:
http://www.admin.ch/ch/f/rs/443_1/index.html (FR)
http://www.admin.ch/ch/d/sr/443_1/index.html (DE)
Cinema Order of 3 July 2002, published in the gazette of federal legislation *(Recueil Officiel des lois fédérales)*, no. 29 of 23 July 2002, page 1915 et seq.; available at the following addresses:
http://www.admin.ch/ch/f/rs/443_11/index.html (FR)
http://www.admin.ch/ch/d/sr/443_11/index.html (DE)
FR-DE

HR – Agreement on Funding Croatian Film Industry Signed by Ministry of Culture and Croatian Radio-Television

Krešimir Macan
Croatian Radiotelevision HRT
Zagreb

On 19 July 2002 the Ministry of Culture and Croatian Radio-Television (HRT) signed the letter of intent which for the first time in Croatia defines the framework for joint production and promotion of at least 5 documentary and 3 feature films in Croatia on a yearly basis. The scripts and authors are to be chosen by public tender published by Ministry of Culture. HRT will finance those projects from the funds reserved by article 11 of the *Zakon o Hrvatskoj radioteleviziji* (Law on Croatian Radio-Television) that envisages that 10% of programmes have to be commissioned from independent production companies. Since 1990, HRT and the Ministry of Culture have financed a vast majority of Croatian feature and documentary films, but without any formal framework of cooperation between the two institutions and have been usually criticized for the lack of clear criteria and transparency. ■

***Zakon o Hrvatskoj radioteleviziji* (Law on Croatian Radiotelevision), *Narodne novine* (Official Gazette) No. 17/01, 2 March 2001**
HR

NEW MEDIA/TECHNOLOGIES

DE – Federal Supreme Court Rules on Electronic Press Reviews

In a decision of general principle, the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) has ruled that the so-called "press review privilege" described in Section 49.1 of the *Gesetz über Urheberrechte und verwandte Schutzrechte* (Act on Copyright and Related Rights - *UrhG*) also applies to electronic press reviews under certain conditions. This means that, if those conditions are met, the copyright collecting company *Wort (VG Wort)* may also demand the statutory fees from publishers of electronic press reviews.

The plaintiff in the legal dispute to which the judgment referred was a daily newspaper, which wanted to prevent *VG Wort* from collecting the statutory copyright fees. In the lower courts to which the case had previously been brought, the judges had upheld the newspaper publisher's claim that the rights to an electronic press review

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belonged to the authors of the texts (or to the publishers if those rights had been transferred) and could therefore not be exploited in the manner provided for in Section 49.1 of the Copyright Act. However, the *BGH* disagreed, ruling that there was no significant difference between electronic press reviews and those published in paper form. The civil chamber suggested that, in this day and age, press reviews published on paper were probably produced electronically anyway. Therefore, irrespective of the form in which a press review was published, it was likely that an electronic archive would be produced during the publication process. However, an electronic press review only fell under the scope of Section 49.1 of the Copyright Act if it was aimed at a clearly defined group of readers, ie if it was only intended for internal use by a company or official body. Commercial services, therefore, were not covered by the provision. ■

***Bundesgerichtshof* (Federal Supreme Court), judgment of 11 July 2002 (case no. I ZR 255/00)**

DE

NO – First Ruling on Criminal Liability for ISP

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Tele2 Norge AS has become the first Internet service provider (ISP) to be convicted by a Norwegian court for disseminating illegal pornography on the Internet. On 5 June 2002, *Oslo Tingrett* (Oslo District court – a court of first instance) fined *Tele2 Norge AS* NOK 500,000 for such an offence.

From July 1998 until May 1999, *Tele2* made so-called newsgroups available to its subscribers. Some of these newsgroups gave access to explicit sexual films and images involving children, animals, violence, coercion and sadism. This illegal pornography was stored on *Tele2*'s server. *Tele2* was therefore charged with infringement of *Straffeloven* § 204(1)a (the General Penal Code – *strl.*), which prohibits attempts to disseminate illegal pornographic material.

In examining the case, *Oslo Tingrett* pointed out the following. According to the preparatory works relating to § 204 *strl.*, Internet hosts, access providers and cable companies are in principle excluded from § 204 *strl.*, because they lack awareness regarding the distribution of the pornographic material. *Tele2* cannot therefore be held responsible for material put on the Internet merely because it provides access to the World Wide Web.

However, the preparatory works do not hinder the application of § 204 *strl.* to newsgroup providers. *Oslo Tingrett* stressed that *Tele2*, in its role as a newsgroup provider, acted as a technical intermediary that has no control over the content of the material made available. This means there is only a small margin for creating criminal liability for newsgroup providers.

Directive 2000/31 EC (Directive on electronic commerce) limits an ISP's criminal liability for negligent behaviour, but does not exclude it entirely. Article 15(1) states specifically that an ISP is not obliged to control the content of material on its server. Recitals 47 and 48 of the Preamble mitigate the scope of Article 15(1).

The Court stated that there are other reasons why such liability might not be desirable. First of all, there is a conflict between the ISP's role as an intermediary on the one hand and the duty to censor on the other hand. Furthermore, it would be undesirable that an ISP be called upon to judge the legality of utterances. Finally, one has to take into account that it is difficult to control content automatically in an efficient and nuanced manner. The Court found that these arguments did not weigh very strongly in this case. The control that *Tele2* had over the newsgroups it offered was incidental and mostly based upon tips from users. The company did not have a clear policy on this matter. The Court found that *Tele2* could and should have been more efficient in its manual checks and controls based on the names of the newsgroups. Moreover, these checks should have been made on *Tele2*'s own initiative. Especially so, since the number of newsgroups was limited to a few hundred and the names of these newsgroups clearly indicated the presence of illegal pornography. It would have been easy and practicable for *Tele2* to go through the groups at regular intervals in order to identify conspicuous newsgroup names. ■

***Oslo Tingrett*, 05-06-02 nr.01-05479 M/73;**
***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.lovdata.no/all/nl-19020522-010.html (NO) and http://www.ub.uio.no/ujur/ulovdata/lov-19020522-010-eng.doc (EN)**

NO-EN

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), available at: http://europa.eu.int/eur-lex/en/archive/2000/l_17820000717en.html

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

PL – Regulation of Electronic Services

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On 18 July 2002 *Sejm*, the lower chamber of Polish Parliament, adopted the Act on the electronic providing of services. The Senate did not present any amendments to the Bill, so on 14 August 2002 it was passed to the President for signing.

The Act defines 'electronic providing of service': it embraces services rendered via data processing systems without the simultaneous physical presence of the parties and at the individual request of the client. Such services may be offered solely via public data processing networks, like Internet.

Furthermore, the Act regulates the duties of service providers in regard to electronically providing services, contains the rules excluding liability of service providers and last but not least – rules for the protection of personal data of service recipients and sanctions for infringement, feature among the provisions of the Act.

Service providers are required to give basic information on their business activity via data processing system used by recipients. They should make available to the recipient access to current information on possible dangers connected with using such electronically provided service. It is compulsory to present to the client a document that sets out precisely the conditions under which a particular service is provided.

The provisions establish a ban on sending unsolicited commercial information to clients via electronic channels, especially by e-mail. Commercial information could be sent only in case of obtaining from an addressee his prior express consent to it.

The Act provides that it will enter into force after 6 months after the date of its publication. It is expected that new law will contribute to development of the electronic economy in Poland and to the enhancement of its value. ■

Act on the electronic providing of services of 18 July 2002
The act is available in Polish at:
http://orka.sejm.gov.pl/Druki4ka.nsf/druk?openagent&409

PL

RELATED FIELDS OF LAW

CH – Parallel Import of Audiovisual Works into Switzerland Subject to Consent of Rightsholder

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According to the new Article 12(1) of the Federal Law on copyright and neighbouring rights (LDA), copies of an audiovisual work may no longer be re-sold or circulated in any other way unless the originator either sells it in Switzerland or has authorised its sale in Switzerland. This statutory provision has been included in the new Federal Law on cinematographic culture and production (Cinema Act - LCin) and came into force on 1 August 2002, thereby prohibiting parallel imports of audiovisual works unless the holder of the rights for the work concerned has authorised this in advance. The ban applies more particularly to videos and DVDs put onto the Swiss market at the same time as and in parallel with the audiovisual work being shown in cinemas.

This means that Article 12(1 bis) of the LDA introduces the concept of the exhaustion of the right to circulate audiovisual works at national level. In other words, a copy of a work may only be circulated in Switzerland if the owner of the rights has consented to such circulation. Subject to this sole condition, the copy may then be freely circulated or re-sold in Switzerland. However, the holder of the rights may object to parallel imports of copies of the work onto the Swiss market if consent is limited to the circulation of such copies in other countries.

In order to exercise the rights conferred by Article 12(1 bis) of the LDA, the holder of the rights concerning the audiovisual work may resort to the protective measures provided for in civil law as regards copyright. The holder may therefore apply to the appropriate court for a ban on unlawful parallel imports and the confiscation and destruction of works imported into Switzerland unlawfully. The holder of the rights concerning the audiovisual work may also claim both damages and the profits made by the importer. Lastly, the judge may order preventive measures, particularly in order to ensure the conservation of evidence, to determine the place of origin of the unlawfully imported works, or to allow the provisional exercise of applications to prevent or stop the nuisance caused by the parallel import. ■

Article 12(1 bis) of the Federal Law of 9 October 1992 on copyright and neighbouring rights (LDA), introduced by Article 36(3) of the Federal Law of 14 December 2001 on cinematographic culture and production (Cinema Act - LCin), in force since 1 August 2002. Available at the following address:
http://www.admin.ch/ch/f/rs/231_1/index.html (FR)
http://www.admin.ch/ch/d/sr/231_1/index.html (DE)

FR-DE

IT – Regulation on the Publication of Public Opinion Poll Results

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On 25 July 2002, the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority - AGCOM) adopted a *Regolamento in materia di pubblicazione e diffusione dei sondaggi sui mezzi di comunicazione di massa* (regulation on the publication and broadcasting of public opinion poll results, Deliberation n. 153/02/CSP). A public consultation on this topic was launched on 22 January 2002 (*Consultazione pubblica in materia di pubblicazione e diffusione dei sondaggi sui mezzi di comunicazione di massa*, Deliberation n. 16/02/CSP).

Article 1 of the Regulation provides that opinion polls have to be conducted according to statistical methods approved by codes of conduct adopted by the most representative national and international professional associations and published according to the conditions defined by the Regulation. It applies to all mass media, including audiovisual and multimedia communications realised by any means, even over the Internet; publishing; press agencies; daily and periodical newspapers, even their electronic versions.

According to Article 2, the publication of opinion polls has to be accompanied by a data box that gives information about the research organisation carrying out the survey; the name of the client; the method by which the information was collected; the sector effectively represented; the achieved sample size and its geographical coverage; the full text of the questions asked and the website where a document containing all relevant technical and methodological information concerning the survey has been collected. This "document" must also be uploaded onto the website of AGCOM (Article 3). As regards the print media, the stipulated information has to be published in a data box; on television, it has to be transmitted during all the time dedicated to the description of the survey, and on radio, it has to be read aloud to the public. AGCOM is entrusted with the power of monitoring compliance with the Regulation and of verifying whether the "document" contains all of the relevant information: violations are punished by fines of up to EUR 100,000 and an order to rectify any incorrect or incomplete information; in cases of non-compliance with the orders of AGCOM, the fines may be increased to up to EUR 250,000. ■

Deliberation n. 153/02/CSP of 25 July 2002, *Regolamento in materia di pubblicazione e diffusione dei sondaggi sui mezzi di comunicazione di massa* (regulation on the publication and broadcasting of public opinion poll results), available at:
http://www.agcom.it/provv/d_153_02_CSP.htm
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IT

LT – Amendments to the Law on Pharmaceutical Activities

On 4 June 2002, the Lithuanian Parliament (*Seimas*) rejected the President's veto on the suggested changes to the Act on Pharmaceutical Activities which were adopted by the Parliament on 9 May 2002. On 29 May 2002 the President announced that the suggested changes on banning advertisements of prescription drugs on radio and television would have banned all information about them on these media. He said that while the changes were aimed at prohibiting advertisements of prescription drugs, they had gone too far as "all information about medicines cannot be identified as being commercials." He

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also argued that the amendments violated the constitutional right of citizens to seek, receive and impart information. He vetoed the suggested changes and sent the act back to the Parliament, proposing that the ban on information regarding prescription drugs on radio and television should be excluded from the amended law.

In spite of that, the Parliamentary majority rejected the President's veto and adopted the amendments by a majority of 86 votes to 37. The new amendments to the Act on Pharmaceutical Activities allow the advertising of prescription drugs only in publications aimed at specialists; for this reason only non-prescription drugs could be advertised publicly. The law in this central provision reads as follows: "It is forbidden to advertise and provide information about prescription drugs on radio and television. It is forbidden to advertise these drugs on electronic information media." ■

Amendments to the Act on Pharmaceutical Activities adopted by the *Seimas* (Parliament) on 9 May 2002.

LT

RO – Protection of Image Rights in Electronic Media

At a public session held on 13 August 2002, the *Consiliul National al Audiovizualului* (National Audiovisual Council – *CNA*) adopted a resolution concerning the protection of human dignity and personal image rights.

The document is based on the concept that everyone has the right to freedom of expression, as long as such expression does not infringe another person's dignity or public image. As the resolution states, a democratic society can take measures to protect national security, territorial integrity and public order, to protect public health and morals and to safeguard the good reputation and rights of others. In this regard, issues or events of local or national importance are defined as "matters or events of public interest" for the life of the community, provided they harm neither public morals nor the basic rights and freedoms of the individual. Such general matters and events of public interest may be reported without restriction in the electronic media. However, the resolution prohibits the transmission of picture or sound recordings without the consent of the persons concerned if the subject dealt with is not of public interest and if the recording was made "off the record".

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In such cases, the content of telephone conversations should not be made public, bearing in mind the individual's right to privacy in personal and family life. If reports in the electronic media contain accusations of illegal or immoral conduct against certain individuals, evidence must also be given. Anti-Semitic and xenophobic material is banned, along with any discriminatory statements, whether based on race, religion, nationality, gender, sexual orientation or ethnic origin. Degrading, condescending or demeaning remarks about elderly or disabled people are also prohibited. People suspected of committing a crime shall be presumed innocent until the court reaches a final verdict. The *CNA* resolution also forbids the transmission - without the consent of the people concerned - of images of "victims", since the right to privacy must also be granted to people in exceptionally difficult circumstances. Regarding the portrayal of human suffering, natural disasters, accidents or crimes, programme providers must strike a balance between their desire to give accurate information and the danger that they might infringe the privacy of the people involved.

Failure to comply with these provisions may be penalised with fines ranging from ROL 25 to 500 million or the withdrawal of broadcasting licences, depending on the seriousness of the infringement.

The resolution will enter into force when it is published in the *Monitorul Oficial al Romania*. ■

***Decizia CNA din 13 august 2002 privind protectia demnitatii umane si a dreptului la propria imagine a persoanei* (CNA Resolution of 13 August 2002 concerning the protection of human dignity and personal image rights)**

RO

RU – How to Prevent Extremism in Mass Media

The Federal Statute on counteraction of extremist activity was adopted during the spring session of the Federal Assembly and signed by President Vladimir Putin on 25 July 2002. Its passing by the Parliament has attracted much public attention because of the long discussion on the nature and sources of extremism and the role of the mass media in fighting it.

The Statute prohibits mass media outlets from carrying out extremist activities and disseminating extremist materials. Article 1 of the Statute defines such kinds of activity as:

- Exciting racial, national, religious or social hatred connected with violence, or dissemination of calls to violence
- Degrading of national dignity;
- Propaganda regarding exclusiveness, superiority or inferiority of citizens in connection with their attitude to or belonging to a religion, their language or their social, racial or national origin;
- Propaganda and public demonstration of Nazi products and symbols or similar products and symbols which could be mistaken as being of Nazi origin;
- Public calls to carrying out extremist activity or commiting acts prohibited by the Statute (terrorism, creation of unlawful armed organisations, etc).

Regarding the definition of extremist material, the act defines it as documents or information of other form intended for publication that incites extremist activity or justifies its necessity. The listed extremist materials are the works of the leaders of the Nazi party in Germany and the fascist party in Italy, publications justifying national and racial superiority, or the commission of military or other crimes directed to the complete or partial destruction of any ethnic, social, racial, national or religious group.

Article 8 of the Statute sets out the liability of a mass media organisation in a case of distribution of extremist materials or conducting extremist activities. First, a warning on the unacceptability of such actions or such activity shall be issued to the founder and/or the editorial office of the mass media organisation. The public institutions and officials authorized to take this measure are: the government body that registered mass media organisation in question (the Ministry for press, broadcasting and mass communication and its territorial

branches), or the Prosecutor-General of the Russian Federation, or public prosecutors subordinate to him.

The warning shall specify the exact grounds of its passing, and can be appealed in court. If the warning is not appealed, or deemed illegal by the court, and also if the infringements are repeated within twelve months from the date of issue of the warning or new facts were discovered that prove the carrying out of extremist activity by the mass media organisation, its activities can be terminated.

Article 11 of the Act provides for additional grounds for termination of the activities of a mass media organisation: these are the infringement of human rights or civil freedoms and/or activities that damage the health of citizens or the environment, offend against public order, public security or encroach upon the property or economic interests of natural or legal persons or the State, or create an actual threat of causing such kinds of harm. The appropriate measures shall be carried out by the aforementioned authorised public bodies and officials.

The court can also suspend the distribution of extremist materials in a periodical publication or audio or video recordings of a program, or the production of radio or video programs, in order to prevent further distribution of these materials.

The court's decision can be the basis for the withdrawal of an as yet non-distributed part of the print-off of an extremist production from places of storage, or wholesale or retail trade. ■

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***Federalniy zakon "O protivodeystvii ekstremistskoy deyatel'nosti"* (The Federal Act on counteraction of extremist activity) #114-FZ of 25 June 2002 was officially published in *Rossiyskaya gazeta* daily on 30 July 2002 and is available at: http://www.rg.ru/oficial/doc/federal_zak/114-fz.shtm**

RU

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AGENDA

UK Communications Bill
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