IRIS
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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EDITORIAL

Guidelines for external contributions to IRIS

The editorial board receives an increasing number of external contributions to be published in IRIS. Law firms, editors of related national law magazines and national authorities involved in media policies send us laws, case law and law related policy developments that are relevant to the audio-visual sector. We regard this as a positive development and are extremely encouraged with this response to our effort to produce an essential reference publication on legal issues that affect the audio-visual industry. However, in order to ensure efficient processing of the information, I would like those who intend to contribute to take account of the following guidelines.

IRIS publishes abstracts only if the underlying document on which the abstract is based, is submitted together with the abstract. Abstracts can be submitted in either English, French or German language. Although we prefer to receive a translation of the underlying document in any (or even all) of these three languages wherever available, we insist on having the document in the original language before we publish the abstract. The ideal length of abstracts is 250 to 500 words. In any case they should not exceed 500 words! Preferably, abstracts should be submitted in electronic form (diskette or e-mail).

In regards to contributors providing a short abstract together with the original document on which the abstract is based, we will publish the name and organisation immediately under the abstract.

Those who contribute by sending information material on relevant law-related policy developments, texts of laws and interesting case law, will also be mentioned by name and organisation, but only in the colophon on page 2.

The Observatory is a partnership organisation and consequently, IRIS is a partnership product. Although the work is coordinated in Strasbourg, most of the editorial work is done in other parts of Europe. Therefore, I would like to ask those who would like to contribute information or abstracts on relevant legal developments in Austria, Belgium, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, or the United Kingdom to send their contributions directly to the:

Institute for Information Law
Mr Marcel Dellebeke
Rokin 84 - NL-1012 KX Amsterdam - Tel.: +31 20 5253644 - Fax: +31 20 5253033
E-mail: md@sara.nl

Contributors who would like to contribute information or abstracts on relevant legal developments in Albania, Belarussia, Bulgaria, Bosnia-Herzegovina, Croatia, the Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, the former Yugoslav Republic of Macedonia, Moldavia, Poland, Romania, the Russian Federation, Slovakia, Slovenia, Turkey or the Ukraine,

please send your contributions directly to the:
Institut für Europäisches Medienrecht (EMR)
Mr Wolfgang Cloß
Hohenzollern Straße 13 - D-66117 Saarbrücken - Tel.: +49 681 51187 - Fax: +49 681 51791

I look forward to receiving your contributions!

Ad van Loon
IRIS Co-ordinator

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

The global Information Society

European Commission presents Green Paper on Copyright and Related Rights in the information society

On 19 July 1995, the European Commission published a Green Paper which deals with intellectual property rights in a multimedia context. It is primarily a discussion document highlighting a number of issues which are, or which are becoming, increasingly significant:
- the convergence between technologies (such as telecommunications and television), with digitalisation as the common denominator, leading to the development of multimedia products, as well as the provision of services at long distance (such as teleworking and telebanking);
- recognition of the necessity to provide legal certainty to investors in the new technology, particularly bearing in mind its ability to cross borders. Traditional notions of copyright and related rights, which historically have been limited in their territorial application, will have to be reviewed to take account of new technological developments. For example, the concept of "author", "originality" and "first publication" need to be reappraised, as well as the status of rightholders' rights. The concepts of "private" or "fair" use also need to be reviewed, in the context of which the distinction between "communication to the public" and "private communication" will be crucial;
- digital technology also means that multimedia works may be created out of works and data which are currently covered by different legal provisions. A separate legal status for such works may therefore be required.

The Commission has also identified nine key areas which it considers vital in assessing the impact of digital technology on intellectual property rights:
1. applicable law;
2. exhaustion of rights and parallel imports;
3. reproduction right;
4. if communication over networks such as Internet are not to become free for all: definition of the concept of "communication to the public";
5. possible creation of an exclusive digital dissemination or transmission right;
6. creation of a digital broadcasting right for neighbouring rightholders;
7. protection of moral rights;
8. acquisition and management of rights;
9. technical systems of protection and identification.

Whilst highlighting these issues, the Commission also seeks the views of "interested parties" in response to specific questions it raises in relation to them. This part of the consultation process ends on 31 October 1995, which is the cut off point for responses and after which the Commission will deliberate further in assessing the need for legislation.
Interested parties should send their views before the deadline to:
European Commission
Directorate-General XV
Internal Market and Financial Services
Unit XV/E-4
Rue de la Loi/Wetstraat 200
B-1049 Brussels
E-mail: E4@DG15.cec.be

"Copyright and Related Rights in the Information Society", Green Paper presented by the Commission on 19 July 1995, COM(95) 382 final.

(Andrew Watson
DENTON HALL, Brussels)

UNITED KINGDOM: Consultation Paper on Regulation of the Information Superhighway

The UK telecommunications regulator has produced a consultation paper on the regulation of broadband switched mass-market services (and their substitutes) delivered by telecommunications systems. It suggests that the future form of such services is uncertain but the market is most likely to tend towards the development of broadband switched mass-market services. Although over-regulation should be avoided, potential investors need to be given an indication as to what the regulatory regime of the future is likely to look like. Successful policies from the regulation of the narrowband world can be adapted such as promoting competition and adopting different policies for dominant and non-dominant systems. The appropriateness of possible key regulatory principles is discussed in detail.
Comments are requested on all the issues raised by 30 November 1995; these may be sent by electronic mail to: press.office.OFTEL@gnet.gov.uk.

Beyond the Telephone, the Television and the PC. Available in English from the Office of Telecommunications, 50 Ludgate Hill, London EC4 7JJ, tel. +44 171 6348700 (free), on the Internet (as are responses) at: www.open.gov.uk./oftel/oftelwww/oftelhm.htm, or at the Observatory.

(Prof. Tony Prosser,
University of Glasgow School of Law)

USA: The "Exon Bill" - Internet censorship?

On 14 June 1995, the US Senate passed the Communications Decency Act of 1995 - also known as the Exon Bill for short, after its author - by 84 votes to 16. The Bill prohibits the use of computerised communication techniques, such as E-mail and online services, to disseminate "indecent" material, and introduces prison sentences and fines for persons who give under-age children access to such material. If the Bill passes the House of Representatives and is not vetoed by the President, communication via Internet in the USA will be appreciably restricted.
It is true, in objective terms, that the Bill merely extends existing rules on telephone communications to online communications. However, this greatly increases the scope of the prohibition clauses, making anything the Internet can carry - from newspapers through photographs to classical literature - a potential target. By contrast, the existing rules on telephone comunications were merely intended to give the victims of obscene telephone calls a remedy in criminal law and withhold access to telephone sex services from young people. Given this narrow field of application, the US Supreme Court found them constitutionally acceptable.
Extending the supervision of indecency to online communications raises problems chiefly because neither the legislator, the government nor the courts have ever come up with even a half-satisfactory definition of the term "indecent". Unlike "obscenity" (i.e. plainly offensive, pornographic material, with no literary, social or scientific value), to which the freedoms guaranteed in the US Constitution's First Amendment do not apply, "indecent speech" is, in principle, protected by freedom of expression. The vague definition of indecency covers sexual allusions and excremental references (e.g. swear-words).
Because even utterances of this kind are protected by the Constitution, the US law-maker is entitled to impose restrictions only for the purpose of protecting the young. Standards in the broadcasting field are laid down and monitored by the Federal Communications Commission (FCC), but there has in the past been surprising uncertainty regarding the acceptability of certain award-winning programmes and even classical texts, like *Ulysses*. Because of this uncertainty, and because they are afraid of being fined, losing their clean image or alienating viewers, broadcasters steer clear of anything even remotely offensive.
If these standards are applied to online services and individual communication on the Internet, the latter's hitherto open, democratic and "state-free" character is bound to be seriously affected. The Internet and online services offer a broad range of functions and communication possibilities, doing many of the things traditionally done by bookshops, newsagents, telegram and telephone services, archives, press agencies, publishers and public forums. So far, all of this has largely escaped state control. The Exon Bill would subject a whole area of communication, which requires no licence (unlike radio and television) and essentially concerns individuals, to state interference of a kind very close to censorship. Online services and service providers may in future find themselves obliged, for fear of prosecution (the maximum sentence is two years in prison), to control network access more strictly, reduce the range of services, and possibly even monitor the content of Internet discussion groups or E-Mail news. This would noticeably inhibit development of the new medium and its possibilities, and would be detrimental in a general sense to free communication.

A Bill to protect the public from the misuse of the telecommunications network and telecommunications devices and facilities ("Communications Decency Act of 1995"), 104th Congress, 1st Session. Available in English from the Observatory.

(Christophe Wagner,
OPPENHOFF & RÄDLER RA, Berlin, currently in Washington D.C.)

Council of Europe

European Court of Human Rights: Defamation award of £1.5m violates Article 10 of the European Convention on Human Rights (freedom of expression)

In its judgment of 13 July 1995, the European Court of Human Rights has held that a defamation award of £1.5m constituted a violation of Article 10. The Court found that the award, having regard to its size taken in conjunction with the state of national (UK-) law at the relevant time, was not 'necessary in a democratic society' and thus was a violation of the applicant's rights under Article 10. The applicant, count Tolstoy Miloslavsky, wrote in March 1987 a pamplet in which he accused lord Aldington of war crimes. An English jury awarded lord Aldington £1.5m in damages, which was approximately three times the largest amount previously awarded by an English libel jury. Having regard to the size of the award in this case in conjunction with the lack of adequate and effective safeguards at the relevant time against a disproportionately large award, the Court found that there had been a violation of the applicant's rights under Article 10 of the Convention.

Decision of the European Court of Human Rights, 13 July 1995, Case of Tolstoy Miloslavsky v. the United Kingdom. Series A vol. 323 Available in English and French at the Observatory.

Parliamentary Assembly: Recommendation on migrants, ethnic minorities and media

On 30 June 1995, the Parliamentary Assembly of the Council of Europe recommended a number of actions that could be undertaken by the Committee of Ministers of the Council of Europe or the Council of Europe member States to ensure that migrants and ethnic minorities are portrayed comprehesively and impartially in the media. The measures proposed aim at a responsible approach by media professionals and improved media access for migrants and ethnic minorities on all levels. The Parliamentary Assembly believes that the media are an important means to inform migrants about their home country, its culture and its language and contribute to forging links between them and the host society. The media also allow migrants to keep in touch with their country of origin and give them a means of expression and of communication with members of their community.

Recommendation 1277 (1995) of 30 June 1995 on migrants, ethnic minorities and media. Provisional edition available in English and French at the Observatory.

Parliamentary Assembly: Recommendation on the power of the visual image

On 30 June 1995, the Parliamentary Assembly of the Council of Europe recommended a number of actions that could be undertaken by the Committee of Ministers of the Council of Europe or the Council of Europe member States to counteract the effects of violence in the media, in particular its portrayal in television, video, film, advertising, photography and computer programmes.
Self-regulation and the adoption of codes of conduct by television programme makers, news editors, film makers and makers and distributors of films, video games and computer programmes together with educational measures in the field of media awareness are regarded as appropriate means.

Recommendation 1276 (1995) of 30 June 1995 on the power of the visual image. Provisional edition available in English and French at the Observatory.

Committee of Ministers: Resolution on EURIMAGES

On 7 June 1995, the Committee of Ministers adopted a Resolution to open up progressively the different schemes of EURIMAGES, the European support fund for the co-production and distribution of creative cinematographic and audiovisual works, to European non-member States.
The Resolution provides the possibility to grant financial aid for co-productions involving co-producers from member States on the one hand and associate member or non-member States of the fund on the other hand, provided that the contribution by the latter States does not exceed 30% of the cost of producing the co-production. Moreover, distributors and exhibitors from an associate member State can, from now on, benefit from the support scheme for distribution and cinemas.

Resolution (95) 4 of 7 June 1995 amending Resolution (88) 15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("EURIMAGES"). Available in English and French at the Observatory.

Critical analysis on the scope and the application of Article 10 ECHR (the freedom of expression)

The Council of Europe has published a critical analysis on the scope and the application of Article 10 of the European Convention for the protection of human rights and fundamental freedoms. The analysis is based on a study performed by Prof. Dr Dirk Voorhoof of the University of Ghent in Belgium.
Prof. Voorhoof has accepted to update the study on a regular basis. Moreover, he will write a contribution on the 1995 developments in relation to Article 10 for the special issue of IRIS which will be distributed to IRIS subscibers in December 1995.

Voorhoof, D. Critical perspectives on the scope and the application of Article 10 of the European Convention on Human Rights (Mass Media Files No 10). Council of Europe Press, Strasbourg, 1995. ISBN 92-871-2719-0.

European Union

Court of Justice of the European Communities: Non-transposition in national law of telecommunications Directive - Part 2

In IRIS 1995-7: 3 we reported that the Court of Justice of the European Communities condemned Luxembourg for not having transposed in national law, Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (OJ 1992 L 165: 27). Transposition should have taken place before 5 June 1993. On 6 July 1995 the Court also condemned Greece for non-transposition of this Directive.

Decision No C-295/94 of 6 July 1995 of the Court of Justice of the European Communities, Commission of the European Communities vs Greece. Available in English, French and German at the Observatory.

European Parliament/European Council: Directive on standards for digital television broadcasting

On 24 July 1995, the European Council adopted a Directive of the European Parliament and the Council on the technical standards for advanced television signals. In particular, the Directive deals with digital television broadcasts. The Directive creates a common framework throughout the European Union for conditional access to digital television services.
The European Union regards the pay television market as the fastest growing area of broadcasting and expects it that the pioneering digital television services will be launched by pay-TV broadcasters. Conditional access is an important issue for the business because it guarantees security and enables broadcasters to collect subscription revenues from their customers.
The Directive will facilitate consumers being able to receive all their digital TV through one box, rather than through a number of different, incompatible boxes to receive all the services they want.
Manufacturers will be obliged to incorporate an open interface socket on all TVs with screens larger than 42cms. The intention is to guarantee that all citizens of the European Union investing in new equipment will be able to connect digital TV decoders without problems.
Furthermore, the Directive ensures that cable TV operators will deliver wide-screen services as broadcast in the 16:9 format to their subscribers. This Directive replaces Directive 92/38/EEC (MAC-standard; OJ EC 1992 L 137).

Directive 8422/95 of 24 July 1995 on the use of standards for the transmission of television signals. Not yet published. Will be made available through the Observatory shortly.

European Parliament/European Council: MEDIA II

On 16 June 1995, the European Parliament adopted two resolutions on the Commission's proposals in regards to a MEDIA II programme (*see*: OJ EC 29.4.95 No C 108: 4-7 and 8-12 as well as IRIS 1995-3: 10).
The first resolution concerns development and distribution. Before the European Council can approve the Commission's proposals in these fields, it needs to consult the European Parliament. Parliament emphasizes the importance of access of European films to cinemas and therefore would like to prioritize support mechanisms that promote the showing of European films in cinemas. Furthermore, Parliament wants to guarantee access to the MEDIA programme for Cyprus, Malta and the central and eastern European countries. Parliament also wants the MEDIA programme to encourage collaboration between distributors, broadcasters and producers of audio-visual works so that joint programming initiatives become possible at European and national levels. Parliament emphasizes the importance of the MEDIA programme for smaller countries with limited means and production capacity and confronted with small linguistic or geographic distribution areas and therefore wants to prioritize support in the fields of, *inter alia*, dubbing and subtitling.
The second resolution concerns a training programme for the professionals of the European audio-visual programme industry. Training is envisaged in many fields varying from script-writing to multimedia production and to understanding the European cultural dimension. These proposals are dealt with in the framework of a cooperation procedure and the resolution follows the first reading of the proposals.
In both resolutions, the European Parliament indicates that it approves the proposals made, upon the condition that the modifications that it suggests are made. Furthermore, Parliament asks to be consulted again in case the Council would make substantial changes to the Commission's proposals.
During the debate in the European Parliament, Commissioner Marcelino Oreja, responsible for audio-visual policy, indicated that the Commission does not intend to give direct support to cinemas. On the basis of the principle of susidiarity of the Maastricht Treaty on European Union, the Commission prefers that the problems of cinemas are settled at local or national level.
On 13 July 1995, the European Council approved and forwarded to Parliament its common position on the training aspects of the MEDIA II programme proposals and gave its final approval to the proposals relating to development and distribution.
A total of ECU 310 million will be made available by the Council for the MEDIA II programme for the period 1996-2000. The development and distribution part of the programme will receive ECU 265 million of this amount. Originally the European Commission had proposed to make available ECU 580 million for this period which amount was, however, not acceptable for a number of Member States, notably Germany, the United Kingdom and the Netherlands.
The funding will take the form of loans or grants which will cover a maximum of 50% of the costs of projects. Exceptions may be made for training aid in which case a maximum of 75% of the costs of the project may be covered. Training aid will take the form of non-repayable grants. Amounts reimbursed for loans will remain allocated to the programme and certain MEDIA I credits will be added to the MEDIA II funds.
The Council has accepted that particular attention needs to be given to the specific needs of countries or regions with low production capacity or languages spoken in limited areas. The Council also accepted that the programme will be open to the associate central and eastern European contries, Cyprus and Malta plus, in addition, the Member States of the European Economic Area which are not a Member of the European Union (Iceland, Liechtenstein and Norway) and other countries with which the European Union has concluded concluded cooperation agreements that include audio-visual clauses. However, participation will be restricted to EU enterprises or those owned by EU nationals.

Legislative resolution embodying Parliament's opinion on the proposal for a decision of the Council relating to a programme to encourage the development and the distribution of European audiovisual programmes (MEDIA II - Development and Distribution) (1996-2000) (COM(94) 0523 - C4-0158/95 - 95/0027 (CNS)), Minutes, provisional edition, 16 June 1995, PE 192.037.

Legislative resolution embodying Parliament's opinion on the proposal for a decision of the Council relating to a training programme fot the professionals of the European audiovisual programme industry (MEDIA II - Training) (1996-2000) (COM(94) 0523 - C4-0171/95 - 95/0026 (SYN)), Minutes, provisional edition, 16 June 1995, PE 192.037.

Available in French at the Observatory.

See also: Europe, Agence internationale d'information pour la presse of 14 July 1995 No 6522 (n.s.): 7-8.

European Parliament: Resolution on Green Paper on strategy options to strengthen the European Programme Industry

On 14 July 1995, the European Parliament adopted a Resolution on the Commission's Green Paper on strategy options to strengthen the European Programme Industry (COM (94) 96).
Parliament supports the Commission in its efforts to work towards a competitive European audio-visual programme industry but considers that the financial means that will be made available by the Council are insufficient.
Furthermore, Parliament calls for a concrete proposal from the Commission on the establishment of a Guarantee Fund to promote big film productions (*see*: IRIS 1995-7: 11).
In the field of broadcasting, Parliament is of the opinion that the licence fee should not be regarded as State aid in the framework of the EC-Treaty (*see*: IRIS 1995-1: 14).
Parliament wants the notion of broadcasting to include multimedia services, which should therefore be made subject to the provisions in the Directive on "Television without Frontiers".
Moreover, the resolution calls for an absolute prohibition of pornography and violence in programmes broadcast, for strict quota rules that guarantee European products access to a large audience and for the strengthening of the competiveness of public broadcasting.
To prevent circumvention of national limitations on ownership concentration in the media sector, Parliament calls for the establishment of a cooperative European Council consisting of independent personalities equally representing the public and private programme providers. This Council would have to provide transparency in structures of ownership and participations in capital of media companies. The Council would need to collaborate with and report to the European Parliament.

Resolution of 14 July 1995 on the Green Paper "Strategy options to strengthen the European Programme Industry". Available in German at the Observatory.

Committee of the Regions: Opinion on the Green Paper on strategic options to strengthen the European programme industry

The Committee of the Regions has presented an Opinion on the Commission's Green Paper on strategic options to strengthen the European programme industry in the context of the audiovisual policy of the European Union (COM (94) 96 final) adopted on 7 April 1994. In presenting the Opinion the Committee trusts that the Commission will take account of the special views of the regional and local authorities on the future of the programme industry. The Committee underlines the cultural importance of the audiovisual industry as safeguarding and promoting the diversity of national an regional cultures.

Opinion on the Commission's Green Paper on strategic options to strengthen the European programme industry in the context of the audiovisual policy of the European Union OJ EC 18.8.95 No. C210: 41.

European Commission: No objection to merger between Disney and CLT

The European Commission has declared to have no objection to the planned merger between Disney Television (Germany) and CLT Multimedia (*see*: IRIS May 1995-5: 6). According to the Commission, the participation of Disney in the Super RTL programme will not lead to a dominant position on the German television (and -production) market, considering its competitive nature.

Decision of the European Commission in Case IV/M, 566, 17 May 1995, Disney Television (Germany) Inc.and CLT Multimedia GmbH. Will be made available through the Observatory shortly.

European Commission: Notification on a strategic alliance between Canal+ and Bertelsmann

The Commission has received a notification on a strategic alliance agreement between Canal+ SA (Canal +) and Bertelsmann AG (Bertelsmann). The agreement sets out the framework for the cooperation between Canal +, active in the operation and marketing of pay-TV channels and in the production of TV programmes and movies, and Bertelsmann Group which is active in the electronic media sector via its subsidiary Ufa Film- und Fernseh GmbH. Other activities of Bertelsmann group are book and magazine publishing, book clubs and music publishing and distribution. The cooperation regards pay-TV activities in greater Europe and as for digital access-control technology, the parties will conduct their activities in a jointly company. The agreement contains provisions regarding territories and products which the Commission has found, afte a preliminary examination, could fall within the scope of Regulation No 17.

OJ EC 4.7.95 No C 168: 8-9.

EFTA

EFTA Court: Advertising freedom acknowledged

In its advisory opinion of 16 June 1995, the EFTA Court has ruled that the «Television without Frontiers» directive (89/552/EEC of 3 October 1989) - which is integrated into the EEA Agreement - must be interpreted as precluding a general prohibition imposed on an advertiser, whereby he is prevented from showing an advertisement contained in a television programme of a broadcaster established in another EEA State. The prejudicial question to the EFTA Court arose as a result of a disagreement between the Norwegian Consumer Ombudsman and the Norwegian subsidiary companies of Mattel and Lego. The toy-manufacturers had been showing their commercials, which were contrary to Norwegian legislation, on TV3. TV3 is established in the UK and broadcasts via satellite television programmes that are specifically directed at Norway. The Consumer Ombudsman requested Lego and Mattel Norway to refrain from broadcasting the commercials in the future. The EFTA Court held that Lego and Mattel were not bound by the Norwegian national prohibition of commercials which target children, since their commercials were broadcast by a broadcaster that is established in another EEA State. The directive's *transmitting state principle* (Article 2 (2)) entails that the broadcaster has to comply with the relevant legal framework of the transmitting state. The commercials on TV3 were in accordance with British legislation. The receiving member states - including Norway - must provide freedom of reception and refrain from restricting retransmission on their territory of television broadcasts emanating in other member states. The Court furthermore held that the Directive lays down rules for broadcasters as well as advertisers. Advertising directed specifically at the receiving state only, falls within the scope of the directive, according to the EFTA Court.

Decision of the EFTA Court of 16 June 1995, joined cases E-8/94 and E-9/94, Forbrukerombudet v. Mattel Scandinavia/Lego Norge. Available in English at the Observatory.

IRIS LEGAL OBSERVATIONS
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National

CASE LAW

AUSTRIA: Constitutional Court considers the constitutionality of the legal principles for licensing of regional radio stations

Following a decision taken on 21 June 1995 the Austrian Constitutional Court *Verfassungsgerichtshof* (VfGH) instigated constitutionality proceedings to examine the legal basis of regional radio legislation and of the frequency distribution plan which both govern the allocation of regional radio licences.
The proceedings were undertaken following complaints from 33 applicants whose licences were refused and who are appealing against the 10 regional radio licences granted at the beginning of the year. In their complaints, the appellants criticise the violation of a number of rights guaranteed under constitutional law and they cite in particular the freedom to broadcast (Art. 10 ECHR) and equality before the law. They also raise objections against the violation of rights concerning general standards considered to be unlawful and included nonetheless in regional radio legislation and the frequency allocation plan.
To be able to run an independent regional or local radio station in Austria it is necessary to obtain permission under the Regional Radio Act *(Regionalradiogesetz)*, in addition to the approval required under telecommunications legislation for transmission equipment. Just how many private radio stations can be given licences is determined by the frequency allocation plan. This plan is issued by the Federal Ministry of public Economy and Transport in a regulation based on article 2.I of the Regional Radio Act. The purpose of the plan is to assign the different terrestrial radio broadcasting frequencies to the Austrian public broadcaster (ORF) and other stations according to frequency and location.
Frequencies available to the private radio sector are grouped together with individual broadcasting licences granted to applicants following public advertisement and administrative procedures carried out by regional radio authorities.
During the discussions about the complaints of the applicants who were turned down, doubts were expressed by the Constitutional Court about the constitutionality of § 2 I, II, III and V of the Regional Radio Act and the legality of the frequency allocation plan which had been drawn up on the basis of this Act.
In the opinion of the Court, the frequency allocation plan goes against the legality principle of the Constitution that certain decisive issues for broadcasting policy should be left open. One of the main purposes of the frequency distribution plan was deemed to be to divide up broadcasting capacity between the ORF and the regional and local programme providers. It was considered that the law did not give legislators enough grounds on which to take this important decision. In particular, it could not be clearly ascertained from the Regional Radio Act exactly how many frequencies should be given over to the ORF and how many should be devoted to regional and local radio stations.
The appeal proceedings will be continued once a ruling has been pronounced in the constitutionality proceedings.

Decisions by the Austrian Constitutional Court on 21 June 1995. Available in German from the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht* - EMR)

AUSTRIA: The Constitutional Court reviews the ban on developing cable stations to see if it has a constitutional basis

The Austrian Constitutional Court (*Verfassungsgerichtshof)* instigated legal review proceedings with its decision of 21 June 1995. This case should make clear whether cable television companies should be allowed to include their own channels in their network and broadcast them.
According to current regulations, cable television companies may only simultaneously relay received signals and broadcast cable text. Any cable broadcasting activity that goes beyond this is not provided for under §§ 20 I, 24a and 24b II of the broadcasting Regulation with the exception of cable broadcasting activities of the Austrian public broadcasting (ORF).
The appellants in the case before the Constitutional Court are the owners of community broadcasting installations in Austria whose applications for approval of the setting up of active cable stations have been turned down. After an unsuccessful appeal, they now complain that rights guaranteed under constitutional law are being violated. These rights include freedom of expression, equality before the law and the freedom to develop business unhindered. They also raise objections about rights which are violated by the use of anti constitutional laws.
The Constitutional Court has also expressed the reservation that the rules, which limit the activity of cable companies, also limit the basic right of broadcasting freedom to an unusual extent. The Court agreed in principle with the idea which had moved the European Court of Human Rights to declare that the monopoly on radio broadcasting held by the ORF was a violation of the Human Rights Convention.
In legal review proceedings the Constitutional Court will now try to ascertain whether and in what way freedom to broadcast should be applied to the field of active and wider-ranging cable broadcasting.

Decision of the Austrian Constitutional Court of 24 June 1995. Available in German from the Observatory.

(Andrea Schneider, *Institut für Europäisches Medienrecht* - EMR)

GERMANY: Federal Court judgment of 16 June 1994 on resale rights *(droits de suite)* in respect of a German artist's work auctioned in the UK

The Federal Court recently decided that the prohibition of discrimination on grounds of nationality, which is one of the fundamental principles of Community law (Judgment of the Court of the European Communities of 20 October 1993) did not apply to the resale rights *(droits de suite)* covered by Section 26 of the German Copyright Act.
The case was brought by *Bild-Kunst,* a copyright exploitation company appointed by the widow and heiress of the artist, Joseph Beuys, who died on 23 Jauary 1986, to supervise rights - including resale rights - applying to his work under the Copyright Act.
The plaintiff argued that the defendant, a German national resident in Germany, and the owner of three pictures by Beuys sold at auction in London on 29 June 1989, should pay the estate 5% of the proceeds.
In its reasons for dismissing the application, the Court stated that resale rights were not recognised in all the EU countries and that, in the absence of harmonisation, the international legal rules on incorporeal rights applied. This meant that the effects of national law were restricted to the country concerned.

Judgment of the First Chamber of the Federal Court of 16 June 1994, I ZR 24/92 "Resale rights in respect of foreign earnings". Available in German through the Observatory.

(Marcel Schulze, Director of Publications, International Copyright Society - INTERGU)

GERMANY: Constitutional Court is giving of reasons to go live on television

The Federal Constitutional Court's *(Bunderverfassunggericht)* recent decision to allow radio and television coverage of its giving of reasons for judgments has given public and private television services something they have been asking for a long time.
The decision is particularly welcome in view of the fact that the Federal and Land justice ministers unanimously confirmed, in mid-June, the Courts Act's prohibition on the recording or filming of court proceedings for public presentation on radio or television, the aim being to protect the personal rights of parties and ensure that the proceedings themselves are neither impeded nor influenced.
In future, the giving of reasons for judgment in the Constitutional Court may be broadcast live on television and radio. A decision making the necessary change in the rules of court was adopted by the Court's sixteen judges in plenary session on Friday, 28 July 1995.
But the new rule contains one restriction, making it possible to suspend the right of transmission when this is necessary "to protect important interests of parties to the proceedings or third parties".
The broadcasters may install only three cameras in the courtroom, and must supply other interested parties with film footage. This means that public and private television and radio companies must agree beforehand on who is to transmit from the courtroom.
Under Section 169 of the Courts Act, court proceedings - including the giving of judgment and taking of decisions - are public, but recording or filming is, in principle, forbidden. So far, this has meant that only the reading out of the judgment itself may be recorded.
Constitutional Court spokesmen explain that extending direct media coverage to reading out of the reasons for judgments is justified by the fact that the judges have concluded their deliberations at that stage, removing the danger of disturbance.
In the Constitutional Court, the prohibition on transmission of proceedings will in future apply without restriction only at the oral stage, when - once the parties have been declared present - photographers and cameramen will still be required to leave the courtroom.

The new rule will be published in the Federal Gazette shortly, and will then be available in German from the Observatory.

(Stefanie Junker,
Institut für Europäisches Medienrecht - EMR)

GERMANY: The Federal Court maintains the ban on Benetton's advertising campaign, considered to be illegal on moral grounds.

The Federal Court of Germany *(Bundesgerichtshof)* has endorsed a decision taken by the Regional Court *(Landgericht)* of Frankfurt on 6 July 1995 in which it stopped an advertisement and brochure campaign by the Italian clothing company Benetton.
Three advertising themes were used in the case as a representation of the whole campaign. They portray an oil-soaked duck floating in an oil slick, hard working children in the Third World and unclothed parts of the human body bearing the stamp "H.I.V. Positive". The slogan "United Colors of Benetton" appears in the bottom right-hand corner of each advertisement on a green background.
The office for the campaign against unfair competition objected to this type of shock advertising on the grounds that it was unfavourable to competition. It made an application for a restrictive injunction against Benetton and the publishers of the review "Stern" and won the case before the Regional Court of Frankfurt. The Federal Court was then asked to hear the case after one of the defendants lodged a special appeal. The court endorsed the findings of the court of first instance and rejected the appeal.
According to the Federal Court this type of attention grabbing advertising was against § 1 of Act on unfair competition. According to this Act, any action taken in business with regard to competition, and which goes against common decency, is forbidden. The fact that the advertisements which gave cause for complaint are not overtly connected to a product is not in contradiction with § 1 of the Act on unfair competition. Even pure attention grabbing or image promotion advertising which increases awareness of a company, and consequently its advertising impact, is considered to be fair competitive action in the terms of § 1 of Act on unfair competition.
In the present case, the accusation of immoral advertising is based on the fact that the portrayal of a being suffering badly appeals to strong feelings of compassion in the heart of the public and therefore infers that the company behind the advertising has similar feelings on the subject. This brings about a feeling of solidarity between the public and company behind the advertising which is then exploited commercially.
Moreover, an advertisement portraying human body parts and also bearing the stamp "H.I.V. Positive" severely violates the basic principles of the preservation of human dignity. AIDS sufferers are portrayed as branded and as such excluded from human society.
A press company which publishes such advertisements is also considered to act contrary to competition rules since it goes against its obligation not to publish advertisements which are obviously grossly unfavourable to competition.

Ruling by the Federal Court on 6 July 1995 (Az: I ZR 110/93 "Oil-covered duck" and "hard-working young children in the Third World" advertising campaign, I ZR 293/93 "oil-covered duck" advertisement and brochure campaign and I ZR 180/94 "H.I.V. Positive"). Available in German from the Observatory.

(Andrea Schneider,
Institut für Europäisches Medienrecht - EMR)

GERMANY: The Bavarian Administrative Court confirms the revocation of a licence granted to DSF.

Media concentration legislation principles were recently considered in a case about satellite broadcasting licences concerning the German sport channel DSF. The Bavarian Administrative Court (Bayerisches Verwaltungsgerichtshof) turned down appeals made by the Bavarian Central Office for New Media (*Bayerische Landeszentrale für neue Medien* – BLM) and DSF with its ruling of 19 June 1995. In so doing it confirmed the revocation of the DSF licence made at first instance.
In the case the Court followed the complaints made by the Berlin Brandenburg Media Authority (*Medienanstalt Berlin-Brandenburg*, MABB) which, on media concentration grounds, had taken measures against the licence granted to DSF at the end of 1992. The decision published by the BLM did not make it clear whether the basic principle of diversity of opinion would be assured. And, in the view of the Bavarian Administrative Court, guaranteeing diversity of opinion was one of the most important factors to consider when licencing private radio. Diversity in the media did not mean that the same continually changing groups of interested parties should divide up the media market between. Examining whether diversity of opinion has been respected before granting a licence is considered therefore to be extremely important, since it is difficult to reverse a negative trend in media concentration. For this reason it is requested that this should be dealt with at the proper time.
The Bavarian Administrative Court directly accuses the BLM of not having carefully examined whether maximum programming limits as set out in § 21 paragraph 1 of the Agreement between the federal *Länder* on broadcasting (*Rundfunkstactivertrag*) were respected before granting a licence. This rule is said not only to take into account the formal programme break-down but also any other possible and real influences. In the opinion of the Court, the corresponding checks were all the more necessary since it had appeared many times in the press that both the Axel Springer Verlag and Mssrs. Leo and Thomas Kirch were involved in numerous companies in the press and radio industry, which worked closely together on mutually beneficial contracts.
In the opinion of the Bavarian Administrative Court, both the usual questions of accountability within the Kirch Group and the relationship between DSF and its customers and programme suppliers should have been more closely checked and assessed before granting DSF a licence. Further, the Bavarian Administrative Court considers it necessary to clarify the relationship between the Kirch Group and the foreign investors in DSF (Berlusconi and Ringier). Finally, any possible connections with and involvement in publishing companies should have been considered also.
In view of the necessary scale of decision, assuring diversity of opinion requires that the legal relationships between the parties involved be made clear especially concerning management control and representation. According to the Bavarian Administrative Court any person who either will not or cannot disclose his personal connections and business involvements "is not suitable as a supplier of services in the private broadcasting sector". It is the applicant's duty to prove materially that he satisfies the conditions for diversity of opinion. He must clear up all doubts concerning this and put a convincing case before the media authority before he can be granted a licence.
As in the ruling at first instance, the Bavarian Administrative Court rejected the appeal for location reasons. The BLM is deemed not to be doing its duty when it only considers the economic needs of single suppliers when taking decisions. Whether the defendants had let themselves be led by such considerations, which the documents available proved, was an irrelevant opinion which did not serve to assure diversity of supply.
The revocation of the licence granted to DSF will only come into force under these proceedings when the Federal Administrative Court has taken a decision on the intervening appeal. The Bavarian Administrative Court has tried twice to use the delaying effect of the case brought by the Berlin-Brandenburg Media Authority. This case should have resulted in the immediate interruption of broadcasts but this has been avoided until now thanks to special rulings by the Bavarian Administrative Court. These special rulings are now the subject of a constitutional appeal case brought before the Federal Constitutional Court in Karlsruhe by the Berlin-Brandenberg Media Authority. The highest German Court is expected soon to make its initial pronouncements as to the principle of the case.

Ruling by the Bavarian Administrative Court of 19 June 1995 on the appeal case involving the Bavarian Central Office for New Media (BLM) and the German sport channel (DSF). Available in German from the Observatory.

(Christophe Wagner,
OPPENHOFF & RÄDLER RA, Berlin, currently in Washington D.C.)

SWITZERLAND: Somebody is described and personally named in the television programme *Aktenzeichen XY*

In media which receive regular public exposure, prejudice to character can only be banned (as a precautionary measure) if it is likely to bring about serious detriment, if no obvious justification exists for it and if the ban does not seem over-exagerated. In the present case, a violation of personal freedom during the explanation of a post office hold-up on an electronic publicly available medium is seen to be jusitified.
The basic principle of "innocent until proved guilty" should be taken into consideration when relating on-going criminal proceedings in the electronic and printed media. Any identifiable representation of a person is considered inadmissable if the legimate need for information can still be met using a report containing neither names nor pictures. Also, the idea of "innocent until proved guilty" means that restraint should be shown when describing on-going court cases. In the current case, the main aim of making the facts public could only be achieved if the appellant was named and shown. However, at no time during the the programme was it either openly stated or inferred that the appellant had carried out the hold-up on the post office. The viewers were only informed that valuables from the hold-up had been found at his home.

Ruling by the Federal Court, 1st public legislation department, 31 January 1995, A against the District Lawyers Association of Zurich and the National Lawyers' Association of the Canton of Zurich. Available in German from the Observatory.

SWITZERLAND: Violation of Programme Regulations

Events should always be "correctly" presented. The diversity of events and viewpoints should be reported in an appropriate manner. Moreover, views and comment should always be made recognisable as such. Reports must remain objective and this requires that the listener and the viewer be able to have as reliable a picture of the facts as possible through the details and views portrayed and also be put into a position where he can come to his own conclusions. The principle of truthfulness obliges the broadcaster to present facts objectively. Controversial facts should be presented in such a way that the viewer is free to make up his own mind. Since an infringement of programme regulations always assumes an objective violation of the journalistic obligation for due care, this care taken when preparing and showing a topic constitutes a legal assessment criteria. Care should not be applied just generally but adapted to circumstances as well as the character and the particularities of the programme content.
The legal requirements for programmes do not preclude programme producers taking a position in a matter or criticising, nor do they preclude investigative journalism as long as transparency is maintained in such a way that the viewer can draw his own conclusions. For transparency to be assured a programme must, in the first instance, not have any manipulative effect as a whole. The producer can use any creative means in his programme on the condition that it does not undermine the obligation to give a true and fair report. The more delicate the subject, the greater the care which must be taken in choosing the style of presentation used.

Decision by the Federal Court, 2nd public legislation department, 16 January 1995, Swiss Radio and Television Company against X and the Independent Television and Radio Appeal Commission, Az. 2A.376/1993/lit. Available in German from the Observatory.

LEGISLATION

GERMANY: Third Act amending the Copyright Act of 23 June 1995

The third Act amending the Copyright Act of 23 June 1995 (BGBl. I, p. 842) came into force on 1 July 1995. The Act implements Directive 92/100/EEC of 19 November 1992, on rental and lending rights and on certain rights related to copyright in the field of intellectual property (OJ EC L 346, p. 61), and Council Directive 93/98/EEC of 29 October 1993, harmonising the term of copyright and certain related rights (OJ EC L 290, p. 9).
The rights of record and film producers and broadcasters are now protected for a period of 50 years, instead of 25 years, as previously. The new rule protecting the rights of photographers in respect of "simple" photographs for a uniform period of 50 years is closely aligned on the Council Directive of 29 October 1993, as are the changes made to bring the wording of the Copyright Act - and the Copyright Protection Act of 9 September 1965 in respect of the obligation of setting up copyright exploitation companies - into line with the directly applicable prohibition on discrimination contained in Article 6 (1) of the EC Treaty and Article 4 of the European Economic Area Agreement. As far as the rights protected by the Copyright Act are concerned, nationals (companies) of other EU and EEA countries are treated in the same way as German nationals (companies).
The Act of 23 June 1995 also regulates the - new - exclusive rental right (prohibition right) of authors and performing right holders as part of the right of dissemination. An author or artist who transfers rental rights in respect of a sound or film recording to the producer of that recording is entitled to fair remuneration for so doing, and this entitlement may not be relinquished in advance.
The Act makes no provision for exclusive rights (prohibition rights) in respect of material lent through facilities open to the public, but states that authors, artists and record and film producers are entitled to remuneration for this.
Finally, the Act of 23 June 1995 contains provisions on the dissemination rights of artists, makes certain extensions in respect of the performing rights of broadcasters bodies, and lays down transitional rules on existing rights.

Third Act amending the Copyright Act of 23 June 1995, BGBl. I. p. 842. Available from the Observatory.

(Marcel Schulze,
Director of Publications, International Copyright Society - INTERGU)

GREECE: New law on private TV and local radio

On 3 August 1995 the Greek Parliament has adopted a law 'on the legal status of private TV and local radio, regulation of matters related to the electronic (i.e. radio and TV) market, as well as other arrangements'. The law is divided into four parts; Chapter A deals with private TV, Chapter B with local radio, Chapter C concerns matters related to the electronic market (radio and TV) and the press. The final Chapter, D, regulates matters related to the Ministry of Press and Mass Media, the legal entities under its supervision and to the National Broadcasting Council. The provisions concerning private TV (Chapter A) include principles for programmes and advertising, the right of reply, and rules for the protection of personality and private life and of childhood. Chapter C includes *inter alia* transparency rules concerning the relations between the mass media, advertising agencies and advertisers.
The law has come into force the day after its official publication, which date of publication was 3 August (see also: IRIS 1995-7: 7).

Law on the legal status of private TV and local radio, regulation of matters related to the electronic (i.e. radio and tv) market, as well as other arrangements; Official Journal 2328 3 August 1995. Available in English through the Observatory.

RUMANIA: New Rules for cable broadcasting

As law n° 48/1992 on the audiovisual sector fails to adequately cover a large number of points within the sector in Rumania, the decisions of the National Audiovisual Council (N.A.C.) have assumed considerable importance. This is particularly true for cable broadcasting, especially in the light of an ambitious decision taken by the regulatory authorities to overcome the shortcomings of article 21 of the framework law. Cable broadcasting has undergone extremely rapid development in eastern European countries since 1991, but this growth has shown up the legislative weaknesses, which have led to a certain amount of turmoil in the sector. In Rumania, 518 broadcasting companies have been licensed by the N.A.C. in what has turned out to be a sort of competitive anarchy, with abundant examples of malpractice The N.A.C. has taken a number of suitable measures to remedy this situation and to improve the quality of audiovisual reception in the 2 million Rumanian households which are connected up to the cable network. Decision no. 116 of 27 December 1994 lays down a whole series of obligations that licensed broadcasters have to meet: subtitling or dubbing of certain foreign-made programmes (films, documentaries, cartoons), information as to the origin of the programmes and the conditions under which they may be broadcast; no films of an erotic nature may be shown before midnight, while commercials can only be shown at certain times; systematic broadcasting of public television programmes, etc.
Moreover, licences will only now be granted within a much stricter framework than that provided for under the framework-law. Decision no. 116 also pays considerable attention to the broadcasting requirements. The Decision explicitly recognises licence-holders to broadcast their own programmes (a necessary element for the medium-term development of the Rumanian audio-visual sector), while at the same time requiring these programmes to meet the same legal conditions as those laid down for terrestrial broadcasts.

Decizia n°. 116 din 27 deciembre 1994 in Bul. n° 8, anul IV, 1995, Consiliul National al Audiovizualului, Bucuresti. Available from the Observatory in Rumanian.

(Nicolas Pelissier,
Communication Programme of the National Centre for Scientific Research - CNRS, France)

LAW RELATED POLICY DEVELOPMENTS

GERMANY: Bill on a Fourth Act to amend the Copyright Act

On 29 May 1995, the Federal Ministry of Justice published the draft version of a fourth Act amending the Copyright Act. The new act is designed to implement Copyright Act Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable transmission (OJ EC L. 248, p. 15).
Concerning the law on satellite transmission, the ministerial draft rewords Section 20 of the Copyright Act to incorporate the Directive's definition of the legally relevant act, transmission by satellite.
Under the draft, the copyright act of transmission consists in the insertion, under the control and on the responsibility of the broadcaster, of the programme signals in an unbroken communication chain, leading to the satellite and back to the earth.
This would do away with the distinction, previously a source of problems in German law, between direct broadcasting and telecommunications satellites, at least in so far as the programme signals are, at the end of the communication chain, relayed to the public; coded transmissions (Pay-TV) would also be covered by this broad definition of satellite transmission.
The proposed new Section 20b of the Copyright Act also restricts the legally relevant act of satellite transmission to a single location. Under this section, only the copyright law of the country where the programme signals are fed into the unbroken communication chain is applicable (the transmitting state theory). The so-called Bogsch theory, which regards the laws of all receiving states as applicable too, has thus been rejected.
Sub-Sections 2 and 3 of Section 20b contain provisions which are intended to make it impossible to evade EU and European Economic Area copyright regulations by shifting satellite transmission to outside countries with lower levels of protection, while nominally operating from an EU or European Economic Area country.
Sub-Section 1 of the new Section 20a states that the right of simultaneous, unaltered and full retransmission of broadcast material by cable belongs to the author of that material. To exercise his rights, however, the author must establish a copyright exploitation company, since the subsidiary nature of the right to exploit previously broadcast material makes a separate contract necessary. Exemption from the obligation of setting up copyright exploitation companies will be granted only to broadcasters in respect of their own programmes. Authors will also have an absolute right to fair payment for retransmission rights by cable operators who relay broadcast material simultaneously, unchanged and in full. This right may be transferred in advance only to a copyright exploitation company.
Finally, the ministerial draft contains transitional regulations on existing contracts and on the changes which must be made in the Copyright Protection Act to implement the Directive.
In their first reactions to the draft, broadcasters admit that additional fees must be paid whenever transmission rights are exercised outside the terms of the original contract. But they are massively opposed to the rule laid down in the proposed Section 20, Sub-Section 2; this, they argue, would mean that terrestrial broadcasters throughout the country would have to pay extra fees for the cable retransmission of their programmes.
In view of the fact that fees for cable use are already covered in their contracts with programme-makers, the broadcasters regard the projected absolute legal right to payment as "serious interference with existing regulations on payment", and even question the draft's conformity with the Directive.

Ministerial Draft version of a Fourth Act amending the Copyright Act, Federal Ministry of Justice, 29 May 1995. Available in German through the Observatory.

(Bernhard Gemmel,
Institut für Europäisches Medienrecht - EMR

NETHERLANDS: Proposals for liberalisation of Media Act

By letter of 26 June 1995, the Dutch government sent proposals to the Parliament on the liberalisation of the Media Act. The proposals include the creation of local and regional private commercial television and a statutory regulation of advertising on local and regional private commercial radio and television. These amendments are planned to take effect starting 1 January 1996. Changes that are to take effect in the longer term (starting 1 January 1997) include the liberalisation of distribution infrastructures. A further liberalisation of the regime for national broadcasters (private and public) will be considered.

Notitie Liberalisering Mediawet, TK 1994-1995, 23968, nr. 9. Available in Dutch at the Observatory.

UNITED KINGDOM: Government proposals for digital broadcasting

The UK Government is drawing up the legislative framework for digital terrestrial broadcasting. Six frequency channels will be made available initially for television, each able to carry at least three television channels, possibly many more. They will need to be multiplexed into a single digital signal for each frequency channel. In addition, seven radio frequency channels will be made available, each with the capacity to offer at least six digital stereo programme services. One of these channels will be allocated to the BBC for national services, another for independent national radio, four for local radio and the seventh is still to be allocated.
The Independent Television Commission and the Radio Authority will be responsible for licensing and regulation. A competition will be organised for the multiplex providers who will be assessed on the basis of their proposals for infrastructure investment and the variety of channels proposed. Thus the system of awarding licenses to the highest financial bid adopted in other recent allocations has been abandoned. Guaranteed places will be offered to existing national broadcasters; a limit will be imposed to control concentration of ownership of 25% of digital capacity and 15% of total television audience.

Digital Terrestrial Broadcasting: the Government's Proposals; Department of National Heritage, Cm 2946. Available from HMSO Publications Centre, PO Box 276, London SW8 5DT; tel. +44 171 8739090, fax +44 171 8738200.

(Prof. Tony Prosser,
University of Glasgow School of Law)

FRANCE: National Assembly Delegation for the European Union proposes resolution on "Television without Frontiers"

On 27 July 1995, the French National Assembly Delegation for the European Union sent a proposal to the National Assembly for a resolution on the European Commission's proposals to amend the "Television without Frontiers" Directive (89/552/CEE of 3 October 1989). The proposal for a resolution on this issue is based on a report of Deputy Francois Guillaume
The proposal contains the following wishes:
- to strengthen European audio-visual production in the framework of the Media II programme;
- to include in the Directive the new services that have the same characteristics as traditional television service;
- to ensure that European works are broadcast during hours with many viewers (primetime);
- that only documentary or fiction programmes should be taken into account when assessing whether or not the European quota rules have been met;
- that preference shall be given to broadcasting quota rather than to production quota;
- to aim at the adoption of quota rules for an unlimited period of time rather than for a period of 10 years as proposed by the European Commission;
- to establish a European Guarantee Fund to support the development of audio-visual production;
- to ensure that all Member States respect the "media chronology" (exploitation hierarchy) agreed upon;
- give a more precise definition of which State is responsible for the activities of television broadcasters;
- give more possibilities to States where broadcasts are received to undertake actions against programmes broadcast from other States and which are considered to be immoral in the receiving State;
- to guarantee an effective protection of minors against broadcasts containing violence or pornography.

Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'Union Européenne sur la proposition de directive du Parlement européen et du Conseil portant modification de la directive 89/552/CEE du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des Etats membres relatives à l'exercice d'activités de radiodiffusion télévisuelle (COM (95) 86 final / nº E 419), et présenté par M. François GUILLAUME, 27 July 1995, No 2188.

Proposition de résolution sur la proposition de directive du Parlement européen et du Conseil portant modification de la directive 89/552/CEE du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des Etats membres relatives à l'exercice d'activités de radiodiffusion télévisuelle (COM (95) 86 final / nº E 419), présenté par M. François GUILLAUME, Rapporteur de la Délégation pour l'Union européenne, 27 July 1995, No 2189.

Available in French at the Observatory.

UNITED KINGDOM: Government's Paper on privacy and media intrusion published

The UK Government has responded to the National Heritage Select Committee's Report on *Privacy and Media Intrusion*. The central policy recommendation is that the Government continues to believe that press self-regulation is the appropriate method of regulating relations between the media and the public.
However, the Government recommends improvements in the effectiveness and independence of the Press Complaints Commission (PCC) in the newspaper industry's Code of Practice. Specific recommendations include:
- the PCC should pay compensation from a fund set up by the industry to those it judges have had their privacy abused;
- the Code of Practice should contain a clearer definition of privacy;
- the duty on journalists to leave property after being asked to do so, should be more specifically stated;
- Article 10 - on intrusion in to shock or grief - should be toughened up;
- a 'hot line' between the Chairman of the PCC and newspaper editors should be set up to warn editors of possible abuses of the Code; and
- the existence of the PCC should be better publicised.

Privacy and Media Intrusion: the Government's Response; Cm 2918. Available from HMSO Publications Centre, PO Box 276, London SW8 5DT; tel. +44 171 8739090, fax +44 171 8738200; £ 7.20.

(David Goldberg,
University of Glasgow School of Law)

USA: The Communications Act of 1995

In the USA a major amendment to the Federal Communications Act of 1934 is currently being debated in Congress on the basis of House proposal H.R. 1555: The Communications Act of 1995.
The proposed changes are numerous and a coherent version of all changes proposed was not yet published. Recently, however, Prof. David Rice managed to compose a relatively comprehensive Bill by cutting and pasting the different proposals which are available in electronic form on computer networks. This version is now available at the Observatory.
The changes proposed concern the development of competitive telecommunications markets (whilst preserving universal service), cable communications competitiveness (cable service provided by telephone companies) and broadcast communications competitiveness.
The latter contains a prohibition on limitation of any form of ownership or other interest in two or more broadcasting stations or networks or in a broadcasting station or network and any other medium of mass communication unless expressly permitted by the Act. One of the provisions proposed prohibits a person or entity from obtaining any licence if such licence would result in such person or entity directly or indirectly owning, operating, controlling, or having a cognizable interest in, television stations which have an aggregate national audience reach exceeding 35 percent. Another proposed provision prohibits a person or entity from obtaining any licence if such licence would result in such person or entity dirctly or indirectly owning, operating, controlling, or having a cognizable interest in, two or more television stations within the same television market (unless one of these stations is a UHF station or if the acquirement of or participation in an additional UHF station would not harm competition relations). Moreover, it is proposed that in a proceeding to grant new, or authorize the assignment of any station license, the application mahy be denied if the combination of such station and more than one other nonbroadcast media of mass communication would result in an undue concentration of media voices in the respective local market. The application would not be granted if all the media of mass communication in such local market would be owned, operated or controlled by two or fewer persons or entities. However, persons or entities may not be required to divest itself of any portion of any combination of stations and other media of mass communications that such person or entity owns, operates or controls unless such person or entity acquires qnother station or other media of mass communications in such local market.
The Act, if adopted, will also establish a television rating code and require distributors to transmit such rating to the public so as to enable parents to block the display of video programming that they have determined is inappropriate for their children. In regards to this, a provision is proposed requiring manufacturers of televisions to equip such apparatus with circuitry designed to enable viewers to block display of all programmes with a common rating.

H.R. 1555, The Communications Act of 1995, amending the Federal Comunications Act of 1934. Not yet published. A summary of 15 pages is available in English from the Observatory.

News

Information on law related policy developments which may have legal consequences but of which no documents or other texts are available yet.

Council of Europe : State of Signatures and Ratifications of the European Conventions that are relevant to the audio-visual sector - Part 5: update until 1 September 1995

IRIS regularly publishes an update of the state of Signatures and Ratifications of the European Conventions that are relevant to the audio-visual sector (*see*: IRIS 1995-1: 16-18, 1995-3: 11-14, IRIS 1995-4: 11 and IRIS 1995-6: 5). In IRIS 1995-6 we published an update until 1 June 1995.
Since then, the European Convention on cinematographic co-production of 2 October 1992, European Treaties Series No 147 entered into force for Germany and the Netherlands on 1 July 1995 and for Finland on 1 September 1995.
There have been no changes in the state of Signatures and Ratifications of the other relevant European Conventions.

European Commission: Non-compliance with Directive on rental and lending rights and certain rights related to copyright

According to the European Commission, Spain, Ireland, Luxembourg, Portugal, Greece and the Netherlands have failed in their obligation to adopt the legislative, administrative and regulatory provisions required in order to comply with the Directive on rental and lending right and certain rights related to copyright (Council Directive 92/100/EEC of 19 November 1992). The date of implementation expired on 1 July 1994. Unless the six Member States give the Commission satisfactory explanations the matter may be referred to the Court of Justice.

Europe Nr. 6535, 3 August 1995, Agence international d'information pour la presse: 8.

Germany : State of transposition in national law of European Directives harmonising copyright law

- Council Directive on the legal protection of computer programmes of 14 May 1991; transposed into national law by the Second Act to amend the Copyright Act, 9 July 1993 (BGBl. I S. 910);
- Council Directive 92/100/EEC of 19 November 1992 on rental and lending rights and certain rights related to copyright and Council Directive 93/98/EEC of 29 October 1993 on the harmonization of the term of protection of copyright and certain rights related to copyright transposed into national law by the Third Act to amend the Copyright Act, 11 May 1995 (BT-Drucksachen 13/115);
- Draft version of a Bill concerning a Fourth Act to to amend the Copyright Act Council Directive 93/83/EEC of 27 September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable transmission (the transposition period ended on 1 January 1995).

Draft versoion of a Bill concerning a Fourth Act to to amend the Copyright Act Council Directive 93/83/EEC, Federal Ministry of Justice, 29 May 1995. Available in German from the Observatory.

(Bernhard Gemmel, *Institut für Europäisches Medienrecht* - EMR)

Council of Europe: Handbook on sound and audio-visual piracy

As reported in IRIS 1995-2: 11, a Group of Specialists on sound and audio-visual piracy (MM-S-PI) operates within the framework of the Council of Europe as a subordinate body of the Steering Committee on the Mass Media (CDMM). The Group was responsible for the drafting of the Recommendation of the Council of Europe's Committee of Ministers inviting the member States to step up their fight against sound and audio-visual pirating. This Recommendation was adopted on 13 January 1995 (*see*: IRIS 1995-1:4). Now the Group has organised a Workshop on the fight against piracy. In preparation of the Workshop, a vademecum was produced, entitled "Handbook on sound and audio-visual piracy". The vade-mecum will be published by the Council of Europe early 1996.

NORWAY: New rules for local broadcasting

Norway is drafting new rules for local broacasting which will apply as from 1 January 1996 onwards. On that date, all present licences for local broadcasting will expire and all local broadcasters will have to apply for a new licence. Licences granted to local radio broadcasters will be limited to a five year period; those granted to local television broadcasters, to a seven year period. The Mass Media Authority will grant only one licence for local television per geographical area. More licences per geographical area may be granted to local radio broadcasters, especially in the case of ideological organisations. The present delimitation of geographical areas will be either enlarged or limited depending on population criteria.
In the past years, the financial situation of local broadcasters has been critical; the changes made aim at an improvement of this situation.
Natural and legal persons may only be granted a licence upon the condition that they do not control more than one-third of the national market for local broadcasting.
Licences will be granted on the basis of an assessment of the applicant's financial situation, proposed programme schedule and professional qualifications.

(Liv Daae Gabrielsen,
Statens Medieforvaltning)

GERMANY: Agreement between the federal Länder on Broadcasting now available in three languages

In Germany, media policies are the prerogative of the sixteen federal states (the *Länder*). They all have media laws of their own. To coordinate their policies in the field of broadcasting, they negotiated between them the *Staatsvertrag über den Rundfunk im vereinten Deutschland* (Agreement on Broadcasting between the Federal States in United Germany) which was adopted on 31 August 1991. A first set of amendments was agreed upon on 24 June 1994; they came into force on 1 August 1994. A second set of amendments is currently under preparation (*see*: IRIS 1995-1: 9).
Article 1 of the Broadcasting Agreement dealing with broadcasting in general
is now available at the European Audiovisual Observatory in the version which incorporates the amendments of 24 June 1994.
The other articles dealing respectively with the Association of German Public Service Broadcasting Organisations (ARD), the German Television Channel II (ZDF), licence fees, funding and interactive videotext are only available in the German language but will be made available in English and French at a later date.

Article 1 (Agreement on Broadcasting) of the Agreement on Broadcasting between the Federal States in United Germany, 31 August 1991 as firstly amended on 24 June 1994. Available in English, French and German at the Observatory.

Following the proposals to amend the "Television without Frontiers" Directive: RTL asks for wide definition of broadcasting

At a European Parliament hearing on amendment of the Directive "Television without Frontiers", RTL called for a wide definition of broadcasting. It argued that this was needed to stop many media operators from evading the regulations, putting traditional forms of radio and television broadcasting at a disadvantage. In particular, full programme operators must not be disadvantaged by comparison with operators disseminating programmes through a variety of single channels. The degree of regulation should vary with the quality of the service provided.
RTL also felt that the rules on advertising should be relaxed in certain areas. As the only way of funding private programmes, advertising had an important bearing on programme quality. High-quality news and information programmes were expensive, and must not be penalised by tougher regulations. Good children's programmes were also dependent on advertising. By ensuring that their own and other European productions were affected less by commercial breaks, broadcasters could also help to promote European programmes more effectively.

Opinion of RTL and Deutschland Fernsehen GmbH u. Co BetriebsKG on the proposed amendments of the "Television without Frontiers" Directive. Available in German from the Observatory.

(Volker Kreutzer,
Institut für Europäisches Medienrecht - EMR)

BELGIUM: Public broadcaster of the Flemish Community presents future plans to the Flemish Council

On 13 June 1995, the public broadcaster of the Flemish Community in Belgium, BRTN, presented its plans for the coming years to the Flemish Council. The BRTN-Decree of 27 March 1991 obliges BRTN to ask for the approval of its activities from the Flemish Council. The present document is the fifth in a row and covers the period until the year 2000.
BRTN highlights its programme policy and asks the Flemish Council to allow more flexibility and less hierarchic structures so as to enable it to adapt quickly to new technological developments.

Meerjarenplan van de BRTN betreffende de peiode 1995-1999, Vlaamse Raad, Buitengewone Zitting 1995,

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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AGENDA

Copyright, Competition and the Music Business: Key issues for today and tomorrow
London, Radisson SAS Portman Hotel, 17 October 1995
Organised by IBC Legal Studies and Services Limited
For registration call Ruth Hogg on +44 171 637 4383

PBME Conference: Public Broadcasting for a Multicultural Europe, Conférence PBME : Télévisions et Radios pour une Europe pluraliste
Strasbourg, Palais de la Musique et des Congres,19-21 octobre
Organised by the Public Broadcasting for a Multicultural Europe (PBME) which aims at promoting representation of immigration and minorities in european radio and television.

The Law and Business of Multimedia - exploiting industry "convergence" for commercial gain
London, Park Lane Hotel,
30 - 31 October
Organised by IBC Legal Studies and Services Limited
For registration call Susan Verneuil or Ruth Hogg on +44 171 673 4383

Trade-related aspects of copyright, 10th annual seminar of the Dutch Foundation for Copyright Promotion; 10 November 1995 Amsterdam, Tropeninstituut; Dfl. 595. Information: tel.: +31 20 5407405; fax: +31 20 5407496.

Fundamental rights and new information technologies in the audiovisual sector; organised by the Government of the Republic of San Mariono abd the International Movement of Catholic Jurists in collaboration with the European Audiovisual Observatory, the Directorate of Human Rights of the Council of Europe, the European Commission and the Institute of Human Rights of the Paris Bar, Location: European Court of Human Rights, Strasbourg, 16 and 17 November 1995; FF 300 (if registred before 10 October 1995; FF 500 after this date). Conference secretariat: Alsace Pauli Voyages, 28 Rue de Vieux marché aux Vins, F-67000 Strasbourg; tel. +33-88-221318; fax +33-88-221987. Max. number of participants: 150.

EBU Copyright symposium: Broadcasters in the Information Society; Vienna 17 November 1995. Information: EBU, Department of Legal Affairs, tel. +41-22-7172505; fax +41-22-7172470.

EMR - Expert seminar
Multimedia and necessary legal reactions
November 9. 1995 in Luxemburg
The conference takes place in the framework of the exhibition "TELEPOLIS - the interactive City". The congress is held in collaboration with the Service des Médias et de l'Audiovisuel of the Government of Luxembourg. During the conference (language: German) the participants may get information on the publications of the EMR, the law data base EMIS and the tasks and activities of the European Audiovisual Observatory in Strasburg, on a information stand. Information and booking: Institute for European Media Law Hohenzollernstr. 13 D-66117 Saarbrücken Tel.: + 49 681 51187 Fax: + 49 681 51791