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## INTERNATIONAL

### EPRA

#### European Platform of Regulatory Authorities: Overview of 16<sup>th</sup> Meeting

On 24 and 25 October 2002, the 16<sup>th</sup> meeting of the European Platform of Regulatory Authorities (EPRA) took place in Ljubljana (Slovenia). The meeting was hosted jointly by the Slovenian Broadcasting Council, and the Telecommunications, Broadcasting and Post Agency of the Republic of Slovenia. Forty-four regulatory authorities were represented and were joined by permanent observers from the Council of Europe and the European Commission.

The plenary session focused on the regulation of public service broadcasting (PSB). Professor Carl-Eugen Eberle, Director of the Legal Department of ZDF, opened the session by explaining the German model of internal-structured supervision of ZDF. Erik Nordahl Svendsen from the Radio and Television Board of Denmark presented a report on an EPRA inquiry on regulatory models in 35 countries throughout Europe. The role of self- and co-regulation of PSB was capital in the discussion that followed these presentations.

Thereafter the participants split into two working groups that met simultaneously to discuss, on the one hand, media concentration and, on the other hand, political advertising.

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Cabrera Blázquez**  
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- EPRA Press Release on the 16<sup>th</sup> meeting in Ljubljana, available at: <http://www.epra.org/content/english/press/2002ljublana.html>
- All EPRA background papers are available at: [http://www.epra.org/content/english/press/f\\_back.html](http://www.epra.org/content/english/press/f_back.html)

EN-FR

The working group on media concentration opened with a presentation by Marie McGonagle from the National University of Ireland, Galway. The main aim of future media concentration regulation should be the safeguarding of key objectives through a proportionate, lighter regulation, focusing thereby on the content rather than on objective criteria. The question of how to monitor content quality in the digital environment was also raised. Sigve Gramstad, from the Norwegian Media Ownership Authority provided an overview of media monitoring systems in Europe. Catharina Nes, from the same authority, gave a brief introduction to the Media Register recently launched in Norway. This Directory is a database containing information about Norwegian media and their owners with the purpose of promoting greater transparency, awareness and knowledge about who owns what in Norwegian media. Finally, Inge Brakman from the Dutch *Commissariaat voor de Media* gave a presentation on the Dutch media monitoring system.

In the second working group, Emmanuelle Machet, Secretary to the EPRA, addressed the concept and definition of political advertising, the legal status of paid political advertising, and presented various recent examples dealing with the subject in different European countries. The discussion focused mainly on the need for a clear definition of political advertising, on practical problems connected with paid political advertising, and on the implications of recent ECHR cases.

The meeting was rounded off by two reports on current developments in European media policy given by representatives of the Council of Europe (Media Division) and the European Commission (DG Education and Culture and DG Internal Market), as well as by a presentation on the broadcasting implications of the EU Directives on electronic communication networks and services by Hans-Peter Lehofer from KommAustria.

EPRA will hold its next meeting on 8 and 9 May 2003 in Naples (Italy) at the invitation of the *Autorità per le Garanzie nelle Comunicazioni* (Italian Communications Authority – AGCOM). ■

The objective of IRIS is to publish information on all legal and law related policy developments that are relevant to the European audiovisual sector. Despite our efforts to ensure the accuracy of the content of IRIS, the ultimate responsibility for the truthfulness of the facts on which we report is with the authors of the articles. Any opinions expressed in the articles are personal and should in no way be interpreted as to represent the views of any organizations participating in its editorial board.

#### • Publisher:

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• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez, European Audiovisual Observatory – Florence Lapérou & Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Tarlach McGonagle, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Natali Helberger, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Peter Strothmann, Institute of European Media Law (EMR), Saarbrücken (Germany)

• **Marketing manager:** Markus Booms

• **Typesetting:** Pointillés, Hoenheim (France)

• **Print:** Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Germany)

• **Layout:** Victoires Éditions

ISSN 1023-8565

© 2002, European Audiovisual Observatory, Strasbourg (France)

## COUNCIL OF EUROPE

### European Court of Human Rights: Another Friendly Settlement in Freedom of Expression Case (Turkey)

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Once again, the Turkish Government has recognised that an interference by the Turkish authorities with freedom of political expression could not be legitimised from the perspective of Article 10 of the European Convention on Human Rights. After reaching a friendly settlement in the cases of Altan v. Turkey on 14 May 2002 (see IRIS 2002-7: 2); Ali Erol v. Turkey on 20 June 2002; Özler v. Turkey on 11 July 2002 and Sürek (no. 5) v. Turkey on 16 July 2002 (see IRIS 2002-9: 3), the Court again took note of an agreement that has been reached between the Turkish Government and a Turkish citizen who had applied to the European Court of Human Rights because of an alleged breach of Article 10 of the Convention.

● Judgment (Friendly settlement) of the European Court of Human Rights (Second Section), Case of Mehmet Bayrak v. Turkey, Application no. 27307/95 of 3 September 2002, available at: <http://www.echr.coe.int>

FR

### European Court of Human Rights: Case of Stambuk v. Germany

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In a judgment of 17 October 2002, the European Court of Human Rights came to the conclusion that a disciplinary action imposed on a doctor for disregarding a ban on advertising by medical practitioners by giving an interview to the press was to be considered a breach of Article 10 of the European Convention on Human Rights.

In 1995, a fine was imposed on the applicant, an ophthalmologist, by a district Disciplinary Court for Medical Practitioners. An article in a newspaper, including an interview with, and a photograph of, Mr. Stambuk was considered as disregarding a ban on advertising by medical practitioners. The interview in which Mr. Stambuk explained the successful treatment with a new laser technique that he applied was seen as a kind of self-promotion, in breach of the [Baden-Württemberg] Rules of Professional Conduct of the Medical Practitioners' Council. According to section 25(2) of this Code, a medical practitioner should not allow pictures or stories which have an advertising character, indicate the name or show a photograph, to be published in respect of his/her professional activities. According to section 27, the cooperation of a medical practitioner in informative publications in the press is only permissible if these publications are limited to objective information, without the practitioner being presented in the form of an advertisement. The Disciplinary Appeals Court for Medical Practitioners upheld the sanction, taking into account that Mr. Stambuk had not only allowed an article which would go beyond objective information on a particular operation technique to be published, but had deliberately acted so as to give prominence to his own person.

The European Court of Human Rights recognised that restrictions on advertising by medical practitioners in

● Judgment by the European Court of Human Rights (Third Section), Case of Stambuk v. Germany, Application no. 37928/97 of 17 October 2002, available at: <http://www.echr.coe.int>

EN

The applicant, Mehmet Bayrak, had been convicted in 1994 and 1995 by the Ankara National Security Court of disseminating separatist propaganda on account of three books with Kurdish themes written or published by him. After the seizure of the books, Bayrak was sentenced to a total of two years' imprisonment and fined a total of TRL 250 million. The content of the books was considered a crime under Article 8 of the Prevention of Terrorism Act.

The case has been struck out of the Court's list following a friendly settlement, after the Turkish Government promised that steps would be taken to guarantee freedom of expression and information, including the offer to pay an amount of damages to the applicant. The Turkish Government made the following statement:

"The judgments against Turkey given by the Court in cases concerning prosecutions under Article 312 of the Criminal Code or the provisions of the Prevention of Terrorism Act clearly show that Turkish law and practice must as a matter of urgency be brought into conformity with the requirements of Article 10 of the Convention. That is further evidenced by the interference complained of in the instant case. The Government accordingly undertakes to make all the necessary changes to domestic law and practice in this field, as set out in the National Programme of 24 March 2001. The Government further refers to the individual measures mentioned in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106), which it will implement in circumstances such as those of the instant case." ■

the exercise of their liberal profession have a legitimate aim in protecting the rights of others or to protect health. However, the question of whether, *in casu*, a disciplinary action was necessary in a democratic society, was answered in the negative by the European Court. The Court recalled that, for the citizen, advertising is a means of discovering the characteristics of services and goods offered. The Court recognised that owing to the special circumstances of particular business activities and professions, advertising or commercial speech may be restricted. The Court also accepted that the general professional obligation on medical practitioners to care for the health of each individual and for the community as a whole might indeed explain restrictions on their conduct, including rules on their public communications or participation in public communications on professional issues. These rules of conduct in relation to the press are, however, to be balanced against the legitimate interest of the public in information and are limited to preserving the good functioning of the profession as a whole. They should not be interpreted as putting an excessive burden on medical practitioners to control the content of press publications, while also taking into account the essential function fulfilled by the press in a democratic society by imparting information and ideas on all matters of public interest.

According to the Court, the article with the interview and a photo of Mr. Stambuk on the whole presented a balanced explanation of the specific operation technique, inevitably referring to the applicant's own experience. The article may well have had the effect of giving publicity to Mr. Stambuk and his practice, but, having regard to the principal content of the article, this effect proved to be of a secondary nature. According to the Court, the interference complained of by Mr. Stambuk did not achieve a fair balance between the interests at stake, namely the protection of health and the interests of other medical practitioners and Mr. Stambuk's right to freedom of expression and the vital role of the press. In sum, there was a breach of Article 10 of the Convention. ■

## European Court of Human Rights: Cases of *Ayse Öztürk v. Turkey* and *Karakoç and Others v. Turkey*

With the adoption of friendly settlements in the cases of *Altan v. Turkey* on 14 May 2002 (see IRIS 2002-7: 2-3), *Ali Erol v. Turkey* on 20 June 2002, *Özler v. Turkey* on 11 July 2002, *Sürek (no. 5) v. Turkey* on 16 July 2002 (see IRIS 2002-9: 4) and *Mehmet Bayrak v. Turkey* on 3 September 2002 (see IRIS 2002-10: 3), several violations of the right to freedom of expression were recognised by the Turkish authorities. In two recent cases, the European Court of Human Rights again came to the conclusion that Article 10 of the European Convention on Human Rights had not been respected by the Turkish authorities.

In the case of *Ayse Öztürk*, the Court was asked to decide on the alleged violations of the right to freedom of expression after various seizures in 1994 of the fortnightly review *Kızıl Bayrak* ("The Red Flag"), of which *Ayse Öztürk* was the owner and editor-in-chief at that time. The applicant was sentenced to imprisonment and fines, with these sentences being suspended for three years. The impugned articles published in the review were considered to amount to inciting hostility and hatred based on a distinction according to race or ethnic origin, or separatist propaganda. The seizures and convictions were based on Article 28 of the Constitution, Articles 36 para. 1, 86 and 312 of the Criminal Code and Article 8 para. 1 of the Prevention of Terrorism Act.

In its judgment of 15 October 2002, the Court, without underestimating the difficulties inherent in the fight against terrorism and referring to the security situation

in south-east Turkey, came to the conclusion that the seizures of the review and the conviction of the applicant could not be considered as "necessary in a democratic society". The Court especially emphasised that none of the impugned articles constituted an incitement to violence and that the comments in those articles took the form of political speech. As regards the fact that the sentences were suspended, the Court was of the opinion that such measures were tantamount to a ban on the applicant exercising her profession, as it required her to refrain from criticising the government or other authorities in a way that could be considered contrary to the interests of the State. This measure restricted her ability to express ideas, notably regarding the Kurdish Issue, that were part of a public debate and forced her to restrict her freedom of expression - as a journalist - to ideas that were generally accepted or regarded as inoffensive or as a matter of indifference. According to the Court, the measures in question were to be considered a violation of Article 10 of the Convention.

In the case of *Karakoç* and others, the applicants, two trade union leaders and a representative of a newspaper, complained of an infringement of their right to freedom of expression after they had been convicted for committing the offence of separatist propaganda under Article 8 of the Prevention of Terrorism Act. The applicants were sentenced to several months' imprisonment in 1994 because of the publication of a statement in the press criticising the policy of the Turkish authorities in south-east Turkey and in which reference was made to "massacres and extrajudicial executions". Taking into consideration the essential role of the press and its role of public watchdog, the applicants were considered to have alerted public opinion to concrete acts that were liable to infringe fundamental rights. The statement of the applicants was therefore considered as political speech by representatives of unions and the press, criticising the policy of the government, without inciting to violence or terrorism. Consequently, the Court held that there had been a violation of Article 10, as the applicants' sentences were disproportionate to the aims pursued and not necessary in a democratic society. The Court also found (once more) a breach of Article 6 para. 1 of the Convention, as civilians accused of terrorist offences should not be tried by a court that includes a military judge: this indeed constituted a legitimate ground for fearing bias on the part of the court in the instant case. ■

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● Judgment by the European Court of Human Rights (Second Section), Case of *Ayse Öztürk v. Turkey*, Application no. 24914/94 of 15 October 2002

● Judgment by the European Court of Human Rights (Fourth Section), Case of *Karakoç and others v. Turkey*, Application nos. 27692/95, 28138/95 and 28498/95 of 15 October 2002; both available at: <http://www.echr.coe.int>

FR

## EUROPEAN UNION

### Court of First Instance of the European Communities: Eurovision System not Compatible with EC Competition Rules

In a judgment given on 8 October 2002, the Court of First Instance of the European Communities considered that the rules concerning the acquisition by third parties of television rights for sports events under Eurovision restricted competition in breach of the Treaty. The Court ruled in favour of the private broadcasters *M6*, *Gestevisión Telecinco*, *Antena 3* and *SIC* and consequently annulled Commission Decision 2000/400/EC which, in application of Article 81(3) of the EC Treaty, had granted an exemption to the Eurovision system from the competition rules.

The private companies, operating free-to-air television channels with national coverage, contested the rules governing the joint acquisition of television rights for sporting events, the exchange of the signal for sports broadcasts under Eurovision, and contractual access for third parties to that system, which gives rise to serious

restrictions on competition. The four applications focused in particular on the sub-licensing system governing access to the Eurovision system for third parties broadcasting free-to-air.

Subsequent to the annulment, in July 1996, of the previous 1993 decision granting an exemption, the European Broadcasting Union (EBU) adopted new provisions, which were the subject of a second Commission exemption decision covering the period 26 February 1993 to 31 December 2005, *inter alia* in the area of sub-licences, considered to offer wide opportunities for live and deferred transmission for non-members on reasonable terms. That second decision was the subject of another action before the Court of First Instance, as the condition on which it is based - i.e. the non-elimination of competition for non-members - had not been satisfied.

In its judgment, the Court of First Instance confirmed the position of the applicants: the sub-licensing system does not guarantee competitors of members of the EBU sufficient access to the transmission rights for sporting

events which members hold by virtue of their participation in that purchasing association.

After an assessment of the structure of the markets concerned and the restrictions on competition resulting from the Eurovision system, the Court's analysis of the effects of the Eurovision system on competition shows that it leads to two types of restriction: first, the joint

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● **Judgment of the Court of First Instance of the European Communities in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00: M6, Antena 3, Gestevisión Telecinco and SIC v Commission (respectively) v. Commission of the European Communities, available at: <http://curia.eu.int>**

● **Commission Decision of 10 May 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case IV/32.150 - Eurovision) (notified under document number C(2000) 1171) (2000/400/EC), Official Journal of the European Communities L 151 of 24 June 2000, p. 18, available at:**

[http://europa.eu.int/eur-lex/en/archive/2000/L\\_15120000624en.html](http://europa.eu.int/eur-lex/en/archive/2000/L_15120000624en.html)

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

## European Commission: Fining of Nintendo for Restricting Parallel Trade in the EU

An investigation conducted by order of the European Commission has revealed that Nintendo and seven of its official distributors in European Union (EU) countries colluded to keep prices within the European Economic Area (EEA) artificially high in the period 1991-1998.

Prices for Nintendo products differed significantly in the various EU countries during the relevant period, with the United Kingdom (UK) clearly being the cheapest country for play consoles and games. At some point, Nintendo products in the UK were up to 67% cheaper than in Spain and 65% cheaper than in the Netherlands and Germany. According to the European Competition Commissioner, Mario Monti, European families "have the right to buy the games and consoles at the lowest price the market can possibly offer".

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● **"Commission fines Nintendo and seven of its European distributors for colluding to prevent trade in low-priced products", Press Release of the European Commission of 30 October 2002, IP/02/1584, available at:**

[http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/02/1584101](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1584101)

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

## European Commission: "Simulcasting" of Music via Internet Facilitated

The European Commission has granted an antitrust exemption under Article 81(3) of the EC Treaty to European radio and television broadcasters who simultaneously broadcast music via the Internet (so-called "simulcasting"). This decision means that television and radio companies will no longer need to obtain individual licences from copyright administration and collecting societies for each country. A single ("one-stop shop") licence from any collecting society in the European Economic Area (EEA) will suffice and cover music broadcasts across most of the EEA.

acquisition of television rights to sporting events, their sharing and the exchange of signal restricts or even eliminates competition among EBU members; second, the system gives rise to restrictions on competition for third parties, since those rights are generally sold on an exclusive basis.

The Court added that, while it is true that the joint purchase of televised transmission rights for an event is not in itself a restriction on competition in breach of the provisions of the Treaty and may be justified by particular characteristics of the product and the market in question, the exercise of those rights in a specific legal and economic context may none the less lead to such a restriction. Barring access to programmes deprives non-EBU channels of potential revenue and demonstrates Eurovision's extreme exclusivity: if the same rights were bought by a media group, operators could negotiate to obtain them for their respective markets.

Both the rules and the operation of the system do not allow competitors of EBU members to obtain sub-licences for the live broadcast of unused Eurovision rights. In reality, the system allows the transmission of competition roundups only under very restrictive conditions. The Commission has therefore made a manifest error of assessment in determining that the sub-licensing system could be granted an exemption. ■

Evidence shows that Nintendo had made arrangements with seven EU distributors to prevent parallel trade from low-priced to high-priced countries. The companies made intensive efforts to find traders that allowed parallel exports. Such traders were sanctioned by being given smaller shipments or by a complete boycott.

Restrictions of parallel trade are strictly prohibited under Article 81 of the Treaty Establishing the European Community (EC Treaty), which forbids any agreements or concerted practices which may affect trade between the Member States and prevent, restrict or distort competition within the EU's common market.

The infringement of Article 81 of the EC Treaty by Nintendo and its seven official distributors has led the Commission to impose a total fine of EUR 167.8 million. The size of the fine is due to the serious nature of the infringement and the harm caused to end-consumers. It is the fifth-largest fine ever imposed for an anti-trust infringement. Largely because Nintendo is regarded as the instigator and leader of the infringement, its fine alone amounts to EUR 149 million, the fourth-largest fine ever imposed on a company for a single infringement. The fact that the Commission intends to grant substantial financial compensation to third parties has also contributed to the size of the fine. ■

The clearance for one-stop agreements follows a notification by the International Federation of the Phonographic Industry (IFPI). The IFPI had applied for the creation of a multi-territorial licence on behalf of copyright administration societies of music record companies. Over the past years, the simultaneous broadcasting of music via the Internet has become increasingly popular. Such global broadcasting is complicated by the traditional system of territorial licensing.

Under this recently announced antitrust exemption, broadcasters may obtain a multi-territorial licence from any EEA collecting society of their choice. The licence will cover all territories in which the local record producers' society is a party to the agreement, i.e. the

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EEA except for Spain and France. In addition, societies from Central and Eastern Europe, Asia, South America,

● "Commission clears one-stop agreements for the licensing of TV and radio music via the Internet", Press Release of the European Commission of 8 October 2002, IP/02/1436, available at: [http://europa.eu.int/rapid/start/cgi/guesten.ksh?p\\_action.gettxt=gt&doc=IP/02/1436101RAPID&lg=EN](http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1436101RAPID&lg=EN)

● Notice pursuant to Article 19(3) of Council Regulation No 17 concerning an application for negative clearance or exemption under Article 81(3) of the EC Treaty (Case COMP/C2/38.014 - IFPI 'Simulcasting') (2001/C 231/04), Official Journal of the European Communities C 231/18, 17 August 2001, p. 18, available at: [http://europa.eu.int/eur-lex/en/archive/2001/c\\_23120010817en.html](http://europa.eu.int/eur-lex/en/archive/2001/c_23120010817en.html)

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

## NATIONAL

### BROADCASTING

#### BE – RTBF brings a case against the CSA

Last July, *Radio-télévision belge de la Communauté française* (Belgian public-sector radio and television station broadcasting to the French-speaking Community – RTBF) was ordered by the *Conseil supérieur de l'audiovisuel* (the audiovisual regulatory body – CSA) to read out a statement, as the regulatory authority had found that the public-sector broadcasting channel had broadcast at 5.50 pm a programme called "*Mortelle perversion*", an episode in the German police series "*Im Namen des Gesetzes*" ("*En quête de preuves*" in French) with the "blue ring on a white circle" marker (parental agreement preferable) rather than the "white triangle on an orange circle"

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● Decision of 9 July 2002 of the CSA's Board for Authorisation and Supervision, available at [http://www.csa.cfwb.be/pdf/Décision%202002-09%20\(RTBF\).pdf](http://www.csa.cfwb.be/pdf/Décision%202002-09%20(RTBF).pdf)

● Civil court of Brussels (urgent matters), 3 October 2002, *Journal des Procès*, issue no. 444, 18 October 2002, p. 29

FR

#### DE – Admissibility of Pornographic Broadcasts

In a judgment of 19 September 2002, the *Bayerisches Verwaltungsgericht München* (Bavarian Administrative Court, Munich - *VG München*) ruled on the admissibility of pornographic television broadcasts. It referred to the rules of interpretation laid down in the judgment issued by the *Bundesverwaltungsgericht* (Federal Administrative Court - *BVerwG*) on 20 February 2002 (see IRIS 2002-3: 7), which established an important principle.

The case concerned the lawfulness of a ban imposed by the relevant supervisory authority, the *Bayerische Landeszentrale für neue Medien* (Bavarian Office for New Media - *BLM*), on the broadcast of various pornographic films which had been shown by the legal predecessor of *Premiere*. The films had been broadcast in encrypted form on a pay-TV channel. They could only be viewed with a decoder and a PIN number. Furthermore, they had been shown using the near-video-on-demand system, which enables the broadcaster to start the programme at various times in close succession. Viewers can then watch the film whenever they want.

Whereas *Premiere* considered this system to be an individual dial-up service and therefore a media service, the court classified it as broadcasting in the sense of the *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting - *RStV*). It was a service available to the general

Australia and New Zealand are also parties to the agreement.

This is the first time that the Commission has issued a decision on collective management and copyright licensing concerning the commercial exploitation of music on the Internet. The Commission believes that the new licence will stimulate competition among the EEA societies granting the licences. There will be more choice and more price competition, and the decision will therefore contribute to the completion of the internal market. ■

marker (parental agreement compulsory, and not to be broadcast before 8 pm). RTBF claimed that it had used the marker used by France 2 when it had broadcast the episode (at 4.10 pm), but this argument was not accepted.

Not only did RTBF contest the sanction before the *Conseil d'État* (an administrative jurisdiction); it also attempted to obtain a stay of execution of the sanction from a judge sitting in urgent matters (a legal jurisdiction). In an order delivered on 3 October 2002, the judge sitting in urgent matters in Brussels declared the case brought by RTBF inadmissible on the grounds that, given the present state of the law, although the CSA was an independent administrative authority set up within the French-speaking Community, it did not have the status of a legal entity. The judge held that RTBF should have taken action directly against the Government of the French-speaking Community. RTBF had the statement read out on air on 10 October and has not lodged an appeal. ■

public. Although the number of viewers was restricted, there was no individualised transfer of data. Programmes which were transmitted in encoded form or which could be received in return for payment were included in the definition of broadcasting given in Article 2.1.2 of the *RStV*.

Article 3 of the *RStV*, which prohibits pornographic broadcasts, was therefore relevant. In accordance with the rules set out by the Federal Administrative Court (see IRIS 2002-3: 7), the *VG München* concluded that the films concerned were pornographic in the sense of Section 184 of the Penal Code. According to Article 3 of the *RStV* and Section 184.1 of the Penal Code, they should therefore not have been broadcast in a way which might have made them accessible to minors. Both courts stated that the TV broadcast of pornographic films was only acceptable if minors were prevented from seeing the films by means of effective barriers. This meant firstly that the equipment for decoding the encrypted films should only be sold to adults and, secondly, that at least one additional effective barrier should be built in to the system to prevent minors gaining access. There had to be some kind of guarantee that only adults would be able to cross that barrier. The *VG München* considered that the first requirement had been met, since subscriptions to the channel were only available on presentation of official proof of identity. This meant that a reliable age check could be carried out in order to ensure that the general decoding equipment

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needed to receive the pay-TV channel was sold only to adult customers. However, it did not believe any additional

● **Bayerisches Verwaltungsgericht München (Bavarian Administrative Court, Munich), ruling of 19 September 2002, case no.: M 17 K 99.3449**

DE

## DE – LPR Alleges Breach of Alcohol Advertising Rules in SAT.1 Swiss Advertising Window

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At its meeting on 16 September 2002, the general assembly of the *Landeszentrale für private Rundfunkveranstalter* (Regional Authority for Private Broadcasters - LPR) of Rheinland-Pfalz issued an official complaint about the TV broadcaster SAT.1. The complaint concerned a commercial for alcoholic drinks, broadcast in summer 2001.

● **LPR press release of 16 September 2002, available at: <http://217.5.161.246/lpr-online/Presse/pres16092002.htm#LPR%20beanstandet%20Alkoholwerbeto8%20im%20schweizerischen%20Werbefenster%20von%20SAT.1>**

● **BAKOM communication of 6 December 2001, available at: <http://www.bakom.ch/imperia/md/content/deutsch/radiotv2/aufsichtsentscheide/38.pdf>**

DE

## DE – Exploitation Rights Agreement between ARD, ZDF and Film Producers

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On 4 September 2002, public service broadcasters ARD and ZDF announced that they had reached an agreement with the *Arbeitsgemeinschaft Neuer Deutscher Spielfilmproduzenten* (Association of New German Film Producers), under which the rights to publicly funded co-productions would, in future, revert back to the producers after five rather than seven years.

## FR – Compliance of a CSA Sanction with Article 10 of the ECHR

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For the first time to our knowledge, the *Conseil d'État* has been called on to determine whether a sanction imposed by the CSA (*Conseil supérieur de l'audiovisuel* – the audiovisual regulatory body) complies with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The CSA had formally ordered a radio station to abide by its undertakings to broadcast a programme of local interest in accordance with its agreement, which stated that the licence-holder undertook to broadcast a daily programme of local interest lasting 23 hours 30 minutes, excluding advertising. Monitoring carried out under the auspices of the radiophonic technical committee had shown that this undertaking was not being respected and that the situation continued to obtain. As the formal order to comply had had no effect, the CSA decided to suspend the station's authorisation to broadcast for one month, and it was this decision that the *Conseil d'État* was being asked to quash. In support of its

● **Conseil d'État (5<sup>th</sup> and 7<sup>th</sup> sub-sections), 29 July 2002, Association Radio Deux Couleurs**

FR

## FR – Appeal to the CSA to Put a Stop to Pornographic Films (continued)

On 15 October, the Chairman of the *Conseil supérieur de l'audiovisuel* (the audiovisual regulatory body – CSA) renewed his call for the public authorities (see IRIS

barrier had been in place. In particular, it thought that an additional PIN number was not an effective barrier, since the same number applied for all pay-per-view programmes and children might therefore use it to watch an important sports event, for example. Moreover, the PIN number could be transmitted via an ISDN-equipped telephone, so age controls could not be enforced. The broadcast of the disputed programmes was therefore illegal.

The possible nature of the first "effective barrier" has therefore been established. However, it is not clear whether a special PIN number used to access erotic films is sufficient as the additional barrier and, if it is, how the user's age can be effectively monitored. ■

*SAT.1 SatellitenFernsehen GmbH* broadcasts in Switzerland where, thanks to the increasing freedom granted by the LPR, it is able to broadcast special advertising windows. The LPR's permission is conditional on the Swiss advertising windows being subject to Swiss law. According to Article 18.5 of the Swiss *Bundesgesetz über Radio und Fernsehen* (Federal Radio and Television Act - RTVG), the advertising of alcoholic drinks, amongst other things, is prohibited. The Swiss *Bundesamt für Kommunikation* (Federal Communications Office - BAKOM), which monitors broadcasting, complained about the commercial to Swiss broadcasters and informed the LPR. In accordance with Article 14.1 of the *Landesrundfunkgesetz Rheinland-Pfalz* (Rheinland-Pfalz Broadcasting Act), the LPR based its complaint on the BAKOM's assessment. ■

ARD and ZDF have therefore met the request of German film producers, who had originally demanded that the period be limited to three years. German production companies had complained that they would not benefit sufficiently from the growth potential created by digital technology for the exploitation of films since, once they had been broadcast about three times, films were usually stored in broadcasters' archives for several years and not used again. This represented a considerable competitive disadvantage for German film producers compared to their foreign counterparts. ■

application, the radio station claimed that the sanction had been imposed in violation of the principle of its right to defend itself. However, the *Conseil d'État* held that since the formal notice listed both the occurrences that were the source of the complaint and the sanctions applicable in the event of the irregularities continuing to obtain, the radio station could have made its comments known by letter and was therefore not in a position to claim a violation of Article 6(1) of the European Convention on Human Rights. Furthermore, since the decision to impose a sanction had been made on the basis of the agreement between the radio station and the CSA, it could not be claimed that the radio station was not aware of the principle of the legality of the misdemeanours and the penalties. Lastly, in view of the gravity of the station's shortcomings and their repetition, even after formal notice had been sent, the *Conseil d'État* held that the sanction imposed was not excessive and could not be deemed to have been made in violation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The application to quash the decision to suspend the radio station's authorisation to broadcast for one month was therefore rejected. ■

2002-8: 7) to incorporate Article 22 of the "Television Without Frontiers" Directive word-for-word in the Audiovisual Communications Act, thereby formally prohibiting the broadcasting of pornographic programmes on French television. According to Article 15 of the Act of 30 September 1986, the CSA is required to ensure that no pro-

gramme likely to be seriously damaging to the normal physical, mental or moral development of minors is made available to the public via sound radio and television, whereas Article 22 of the Directive refers specifically to programmes containing scenes of pornographic or gratuitous violence, terms which the regulatory body would like to see incorporated in French legislation. Viviane Reding, the European Commissioner with responsibility for audiovisual matters, said in a letter to Dominique Baudis that Article 22 constituted a measure of partial harmonisation as the Directive did not contain any definition of what might be considered to be "seriously damaging". It was therefore up to the national authorities to determine the criteria for determining what constituted "seriously damaging", and in consequence what should be prohibited. This had been confirmed by relevant case law. The Commission thus confirmed that although the Commission considered that the text France has incorporated is enough to comply with the Directive, there was nothing in the Directive to prevent a country imposing more stringent measures on the broadcasters over which it had authority. The CSA has however indicated that its position remains unchanged.

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## FR – CSA's Response to the Government's Public Consultation on the Evolution of French Law on Electronic Communications

At its plenary meeting on 1 October 2002, the *Conseil supérieur de l'audiovisuel* (the audiovisual regulatory body – CSA) adopted the text of its response to the evolution of French law on electronic communications as part of the public consultation launched by the Government with a view to incorporating the "Telecoms Package" into national legislation. For the audiovisual sector, the public consultation broaches many questions that, without necessarily being directly linked to the incorporation of Community texts in national legislation, touch on the very organisation of regulation and the legal scheme for the distribution of services and the way in which frequencies are allocated to audiovisual services.

The CSA's response is based on the two fundamental principles governing the regulation of audiovisual communications – freedom of communications and cultural diversity. Pursuit of the objectives of pluralism and cultural diversity should be sought over the whole range of audiovisual communications, with the long-term aim being the principle of technological neutrality advocated by the European Commission. This presupposes a clear legal definition of what constitutes television and sound radio services, which does not at present exist in French law, and the setting up of an appropriate scheme for the other audiovisual communications services.

For the commercial distribution of audiovisual services that do not fall within the scope of the incorporation of the "Telecoms Package" in national legislation, the CSA has spoken out in favour of greater flexibility in the

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● CSA statement of 1 October 2002, available at: [www.csa.fr](http://www.csa.fr)

FR

## FR – Michel Boyon Submits his Report on Digital Terrestrial Television

On 17 July 2002, the Prime Minister Jean-Pierre Raffarin asked Michel Boyon, a former chairman of Radio France, to report on certain aspects of digital terrestrial television (DTT) in order to enlighten the Government in

The question is dividing the political groups. The Minister for Culture and Communications said that he was strongly in favour of the concept of viewers' freedom of choice; he felt that, as long as instant access to such programmes was not possible because of encryption or because a specific subscription was required, parents were able to exercise their responsibility, an opinion shared by the President of the National Assembly, Jean-Louis Debré, and the opposition MP Laurent Fabius. Canal + and the AB Group (which produces the pornographic channel XXL) have already informed the CSA of new technical solutions for encrypting pornographic films. MPs have also been looking into the matter, and three MPs from the Government majority have tabled a bill aimed at making the broadcasting of pornographic films on television subject to the introduction of a system of double encryption with deliberate unlocking; this system would oblige an adult wanting to watch a violent or pornographic broadcast to enter a confidential code, meaning that minors would no longer have access to such films inadvertently, without an adult's supervision.

Furthermore, when they were examining the draft budget for 2003, MPs voted for an amendment that would double the tax levied on profits generated by the production, distribution or representation of pornographic films or films encouraging violent behaviour (from 33% to 60%), but in the end the text was withdrawn. It would appear that the CSA's appeal has been heard, although specific solutions have not yet been determined. ■

scheme that applies to cable operators, which could merely be required to make a straightforward declaration, and a relaxation of the anti-concentration provisions that are specific to cable operators (threshold of 8 million inhabitants).

The CSA repeats its commitment to the principle of selection based on quality criteria and to the principle of not charging for frequencies, which it feels constitutes a guarantee of pluralism. On this important point, it does not share the view of the *Agence de Régulation des Télécoms* (telecommunication regulatory agency – ART), whose chairman, Jean-Michel Hubert, would like to see the scheme for using frequencies that applies to telecom operators – and under which they usually have to pay – applied to audiovisual operators as well.

In its response, the CSA also proposes a range of legislative changes aimed at shortening the procedure for issuing authorisations, thereby keeping to the eight-month deadline provided for in the "Telecoms Package"; it is not in favour of allowing authorisation to be transferred.

The CSA feels that it is necessary to introduce real competition in the sector concerned with the technology required for terrestrial digital television, that regulation of this market faces the same problems as the technical operation of telecommunications infrastructures, and that is it therefore legitimate that it should be the same body, ie the ART, that regulates both markets. Lastly, the CSA feels that meeting the objectives of pluralism and diversity calls for reinforced economic regulation of the audiovisual communications sector, appropriate investigative powers and a wider range of action in settling disputes.

Lastly, the CSA would like its sanctioning power to be adapted, more particularly in order to make it easier for the body to announce that fines have been imposed and to have its statements broadcast. ■

its decision-making on three points – financing methods and an evaluation of the cost of the operations for reorganising frequencies necessary for setting up terrestrial digital television, the parameters of the public-service television channels on DTT, and the conditions for developing local television stations. This followed on from questions from the Chairman of the *Conseil supérieur de*

*l'audiovisuel* (the audiovisual regulatory body – CSA) to the Government and requests for further information from the Minister for Culture and Communications, the Minister for the Economy, Finance and Industry and the Minister for the Budget and Budget Reform. Mr Boyon submitted his report on 18 October.

Firstly, he indicates that full digitalisation of the audiovisual sector is an autonomous process for replacing one technology by another that is deemed to be more efficient and that as such DTT should be given a chance and its introduction accompanied. The replacement of analog broadcasting by digital broadcasting upholds three objectives of general interest – the rationalisation of spectrum

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● Ministry of Culture and Communication, Boyon Report, available at:  
<http://www.culture.fr/culture/actualites/communiq/aillagon/RapportBK.rtf>  
● Press release on the introduction of digital terrestrial television of 21 October 2002

FR

## HR – Privatisation of Third National TV Frequency and Division of HRT

The Croatian Prime Minister last month expressed his dissatisfaction with “the speed and quality of transformation” of *Hrvatska televizija* (Croatian Television – HTV) into a public broadcasting service and announced that the ruling coalition is determined to divide the existing public service broadcaster *Hrvatska Radiotelevizija* (Croatian RadioTelevision – HRT) in two separate companies – radio and television. According to the existing *Zakon o Hrvatskoj radioteleviziji* (Law on Croatian Radiotelevision, see IRIS 2001-5: 11) this division had to take place on 1 July 2002, but since the complete implementation of the law was delayed for more than four months due to the very slow nomination of controlling bodies by *Hrvatski sabor* (the Croatian Parliament) this deadline was interpreted as an instructional one.

The Prime Minister (PM) also strongly supported privatisation of the third national terrestrial TV frequency currently operated by HTV, saying that only stronger competition can ensure better programming. HTV currently operates 3 national terrestrial networks and still holds an average 87% share of the viewers, although the commercial competitor Nov@ TV has been in existence since 2000 (11% share), as well as the network of local and regional stations CCN that broadcast 5 hours per day on national level (2% share). According to the existing

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● Račan: Koalicija razmijenila mišljenja o izbornom zakonu (PM Račan: Coalition discussed changes of electoral law), 16 September 2002 HINA (Croatian News Agency) <http://www.hina.hr>

● GfK tvTrend: Analiza gledanosti televizija 1.1.2002 - 31.08.2002 (GfK tvTrend: Analysis of TV ratings in Croatia 1 January 2002 - 31 August 2002), September 2002 GfK - Centar za istraživanje tržišta (GfK-Centre for Market Research) <http://www.gfk.hr>

● HRT potpisao ugovor o distribuciji programa s Odašiljačima i vezama (HRT signs a contract on programming distribution with Transmitters and communications), 18 July 2002. HINA (Croatian News Agency) <http://www.hina.hr>

management, the provision of a wider range of channels, and the promotion of the development of community television. The report proposes a new, more realistic schedule – the first broadcasts could be made in December 2004 for about 40% of the population, and in 2008 for 80% of the population. It lists the prerequisites for a successful, sustained process – ensuring the attractiveness of the programmes on offer, resolving the technical problems, guaranteeing the availability of reception equipment, checking that a distribution network has been set up, promoting the development of France’s production of images, and creating a space for discussion and coordination among the partners in the project. These conditions are based on the assumption that the success of DTT rests broadly on the mobilisation of private initiatives.

Following this report, the Government has decided to pre-finance the initial work on reorganising analog frequencies. The cost of this work is to be borne by the DTT channel editors, which will repay the advance gradually; legislative provisions are to be adopted shortly clarifying this point. The Government has also decided, pending the conclusions of the work being carried out by the Ministry of Culture and Communications, to retain the three channels pre-empted by the State on behalf of the France Télévisions group. ■

Law on Croatian Radiotelevision, the third frequency of HTV had to be privatised one year after the law had been passed *i.e.*, March 2002, but the Croatian Government has not published any tender for its privatisation so far.

The HTV’s third network currently covers at least 98% of the territory of the Republic of Croatia with its signal and HTV’s annual expenses for its transmitters network are estimated at EUR 4 millions. This issue has been discussed since 1997, and so far several foreign and domestic investors have expressed their interest in privatisation of the third terrestrial network. Silvio Berlusconi’s “Fininvest” expressed interest in investing in TV in Croatia as early as 2000, having in mind a program broadcast in Croatia and then distributed by satellite in the region but there has been no further news since. Central European Media Enterprise (CME), owner of private TV stations in several transition countries, including neighbouring Slovenia, is considered to be the most interested in this acquisition. June’s meeting of the PM with Robert Murdoch in New York proves that even News Corporation is eager to expand more in the region after its success in Bulgaria. Croatian regional TV Net also recently expressed their willingness to compete for the privatisation of the third network. According to the existing *Zakon o telekomunikacijama* (Law on Telecommunications) one single shareholder can hold up to 33% of the shares. Having this limit in mind, as well as further limitations imposed by other legislation, the Government on 16 May 2002 assigned to the Ministry of Culture the task of preparing the necessary changes in the Law on Croatian Radiotelevision and the Law on Telecommunication no later than December 2002. The first drafts of these laws are expected to be made public in November 2002, since these changes are an essential part of the Agreement on Stabilization and Association signed between Republic of Croatia and the EU. ■

## IE – Minister Announces List of Major Sports Events

On 15 October 2002, the Minister for Communications, Marine and Natural Resources published a list of major sports events that the Government has approved as events that are of major importance to Irish society and which should continue to be available on free-to-air television services. The Minister has the power to do this under section 2(1) of the Broadcasting (Major Events Television Coverage) Act, 1999, which implements the relevant pro-

visions of the “Television without Frontiers” Directive, but this is the first time that the Minister has used this power.

The impetus for the drawing up of the list arose last summer when the national public service broadcaster, *Radio Telefís Éireann* (RTÉ), lost the right to screen live coverage of the Republic of Ireland’s home international football matches for the next four years. The Football Association of Ireland (FAI, the body governing the sport in Ireland) sold the rights to Sky Sports, so the games will only be available on a pay-per-view basis.

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The list of events was drawn up following consultation with members of the public and with sports bodies. The following events are to be free-to-air on a live basis:

- The Summer Olympics;
- In Gaelic Games: the All-Ireland (*i.e.*, including both the Republic of Ireland and Northern Ireland) Senior Inter-County [Gaelic] Football and Hurling Finals (Gaelic football is distinct from "association football" (soccer) and hurling is a popular Gaelic game, somewhat similar to hockey, which is played by men);
- In Soccer: Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournament; Ireland's games in, and also (whether Ireland participates or not) the opening game, the semi-finals and the final of, the European Football Championship Finals Tournament and the FIFA World Cup Finals Tournament;

- "Dermot Ahern Announces Free to Air TV Sports Events", Department of Communications, Marine and Natural Resources Press Release (including the List of Events) of 15 October 2002, available at: <http://www.marine.gov.ie>
- The Broadcasting (Major Events Television Coverage) Act, 1999, available at: <http://www.gov.ie/bills28/acts/1999/a2899.pdf>

## IE – Broadcasting Forum Report

The Forum on Broadcasting, established by the Government in March 2002 (see IRIS 2002-7: 13), reported in August. Many individuals and organisations, including *Radio Telefís Éireann* (the national public service broadcaster, RTÉ), the Broadcasting Commission of Ireland (BCI) and the Office of the Director of Telecommunications Regulation (ODTR), made written submissions to the Forum. The ODTR set out the current position regarding broadcasting services in Ireland and the future under the new EC Framework Directives. The BCI set out all the relevant statutory provisions and assessed various aspects of the current position regarding the range and types of broadcasting services. It supported many of the present arrangements, accepted the appropriateness of public/private partnerships in the context of the development of new channels, and made the case for a single content regulator.

The main conclusions of the Forum centred on the importance of fostering and strengthening public service broadcasting. Funding and requests for a greater increase in the licence fee had been major issues over the years, particularly with the planned introduction of digital television (see IRIS 2001-4: 9, IRIS 2001-8: 11 and IRIS 2002-4: 7). The Forum took the view that funding should

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- "Forum on Broadcasting Report to the Minister For Communications Marine and Natural Resources Dermot Ahern TD", August 2002, available at: <http://www.dcmnr.gov.ie/files/BroadcastingFinal.doc>  
see also: <http://www.forumonbroadcasting.ie/>

## IT – Government Presents Draft Law on Broadcasting

On 25 September, the *Ministero delle comunicazioni* (Minister for Communications) presented a draft law laying down new provisions for the broadcasting sector to the *Camera dei deputati* (Chamber of Deputies of the Italian Parliament). The discussion began on 17 October in the Parliamentary Commissions for Transportation and Culture. Once the discussion has ended and the draft has been approved, the amended text will have to be passed by the *Senato della Repubblica* (Senate of the Italian

- In Rugby: Ireland's games in the Rugby World Cup Finals Tournament;
- In Horse Racing: the Irish Grand National and the Irish Derby;
- In Equestrian Events: the Nations' Cup at the Dublin Horse Show.

The Minister has also designated Ireland's games in the Six Nations' Rugby Championship as events to be available on a deferred basis.

The Minister must now seek the approval of the *Oireachtas* (the Irish Parliament) for the list before he can submit it to the European Commission for final approval under the "Television without Frontiers" Directive.

The Minister has also announced that he intends to introduce amendments to the Broadcasting (Major Events Television Coverage) Act, 1999. The first of these proposed amendments would facilitate the determination of a fair market value for television sports rights where negotiations have broken down between a broadcaster and the organiser of a designated event. The second proposed amendment would give a qualifying broadcaster (RTÉ, or TV3 - Ireland's only commercial television broadcaster) the right to secure the broadcast rights for a designated event directly from the organiser where exclusive rights to such an event had already been sold to a non-qualifying broadcaster at the time of the original designation. ■

be sufficient to allow RTÉ, as the designated public service broadcaster in the State, to fulfil its obligations and plan for the future on a realistic level. Increased public funding for RTÉ should be conditional, however, on RTÉ's fulfilment of its public service obligations and on its efficient operation, which should be monitored in accordance with a Charter. Transparency was identified as a key requirement in various specified areas of its operation, including commissions from the independent production sector.

The Forum also recommended the establishment, by legislation, within three years, of a new single regulator for broadcasting in Ireland to be called the Broadcasting Authority of Ireland (BAI), to assume the existing regulatory functions of the BCI and the RTÉ Authority. An autonomous Broadcasting Complaints Commission should remain and the ODTR should continue to regulate distribution platforms, but with formal liaison between the ODTR and the BAI.

Other recommendations include the promotion of community broadcasting as a stated policy objective of the Government and regulatory authorities. Irish-language broadcasting should be enhanced and incentivised and children's programming should be encouraged in the case of all broadcasters. In addition, the Government should promote, at a European level, clear and enforceable policies in relation to children's advertising.

The Government is still accepting responses to the Report online prior to formulating its proposals. ■

Parliament). The "shuttle" between the two Chambers will have to continue until a common agreement has been reached.

The aim of the proposed new Act (Section I: Articles 1-10) is to individuate the general principles of the national, regional and local broadcasting sectors, as determined by technological developments and the converging process between traditional broadcasting and other sectors such as telecommunications, publishing and Internet (the so-called integrated communications system). The principles concern the main aspects of free-

dom of expression and pluralism of the media and they set out the framework provisions for the exercise of the regulatory powers of the Regions. The recent reform of the Constitution provided for by Constitutional Act No. 3 of 18 October 2001 has included the communications sector among the topics characterised by shared competences between the State and the Regions, with the latter acting within the limits fixed by central legislation.

Section II concerns the protection of competition in the communications sector. New rules on media concentration will be introduced and most of the existing rules (see IRIS Special, "Television and Media Concentration - Regulatory Models on the National and the European Level", 2001, p. 47) will be replaced. The threshold of 20% of the frequencies that have been assigned according to the frequency plan (see IRIS 1999-4: 8) is confirmed, but reference is made to the DTT frequency plan that is still to be adopted (Article 12). In the meantime, existing broadcasters transmitting on Hertzian frequencies will be allowed to continue their transmissions, even if these exceed existing thresholds, provided that they transmit in simulcast on cable or satellite (Article 22). The threshold based on economic revenues is lowered from 30% to 20% (see IRIS 2000-7: 7), while the terms of reference for the calculation no longer relate to the traditional broadcasting sector, but to the integrated communications system (Article 13, para. 1), as defined in Section I. Cross-ownership limitations between television broadcasting and publishing will be abolished (Article 23), and new cross-ownership rules will limit the possibility of telecoms operators collecting more than 40% of the revenues of the telecommunications services market to acquiring not more than 10% of the revenues of the integrated communications system (Article 13, para. 3).

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Comunicazioni

● *Disegno di legge AC 3184, Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI Spa nonché delega al Governo per l'emanazione del codice della radiotelevisione*, 25 September 2002, available at:

[http://www.camera.it/\\_dati/leg14/lavori/stampati/sk3500/frontesp/3184.htm](http://www.camera.it/_dati/leg14/lavori/stampati/sk3500/frontesp/3184.htm)

● *Modifiche al titolo V della parte seconda della Costituzione, Legge n. 3 del 18 Ottobre 2001, G.U. n. 248 del 24 Ottobre 2001* (Constitutional Act No. 3 of 18 October 2001), available at: <http://www.camera.it/parlam/leggi/01003lc.htm>

● *Legge finanziaria per il 2003. Testo presentato alla Camera il 30.9.2002 (draft budget for 2003 of 30 September 2002)*, available at:

<http://www.cittadinolex.kataweb.it/Article/0,1519,2042711006,00.html#art44>.

IT

## RO – CNA Takes New Steps to Protect Minors

As a result of Decision no.78, adopted by the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) on 8 August 2002, new warning symbols will be introduced for films and TV programmes in Romania from this autumn onwards.

The new CNA regulations state that, in order to protect minors, TV operators should separate these productions into the following five categories and label them with the appropriate warning symbol: 1) Productions whose content is generally acceptable and which therefore need no particular warning symbol; 2) Productions which may only be watched by children under 12 with their parents' consent. The symbol for this category consists of a small red circle with the letters "AP" (standing for the Roma-

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● *Decizia nr. 78 privind protecția minorilor în cadrul serviciilor de programe (Decision no.78 on the protection of minors in connection with programmes), Monitorul Oficial al României No.609, 16 August 2002*

RO

Section III (Article 14) delegates to the Government the task of adopting a code that will collect and rationalise all existing provisions in the communications sector: the code will be adopted by a *decreto legislativo* (legislative decree) and will have the same force as an ordinary law, with the possibility of directly amending existing legislation.

Section IV (Articles 15-19) reserves general public service broadcasting for a public concessionaire (*Radiotelevisione italiana*, RAI) acting on the basis of national and regional contracts signed by the Minister for Communications on behalf of the Government and renewed every three years. Public service broadcasting has to be ensured on the whole national territory for a minimum of 3,000 clock transmission hours during 2003; every three years the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority, AGCOM) has to define the amount of transmission hours. Specific provisions concern access to party political broadcasts, the promotion of the Italian language and culture abroad, the protection of minority languages in Italy, the preserving of RAI's audiovisual archive, etc. The provisions mentioned in the Act may be integrated by AGCOM before the renewal of the above-mentioned contracts. AGCOM is charged with checking that the income deriving from the public service fee is used only for carrying out public service programming in accordance with the Communication from the European Commission on the application of State aid rules to public service broadcasting of 15 November 2001 (see IRIS 2001-10: 4). The privatisation process of all three RAI channels will have to start by 31 January 2004; no stakeholders may hold more than 1% of the shares and a quota of the stocks will be reserved for people who have regularly paid the public service fee in the previous year.

Section V (Articles 20-24) concerns the switch-over to digital terrestrial transmissions in 2006. Three stages are foreseen for the coverage of DTT: 50% of the population before 1 July 2003, 60% before 1 January 2004 and 80% before 1 January 2005. During this transition period, RAI will have to transmit using both analogue and digital technology. In order to accelerate the process, the rental or the purchase of DTT set-top boxes will be encouraged through economic incentives to households, so as to provide 40% of Italian families with them before 31 December 2004 and 70% by 31 December 2005. The draft budget for 2003 foresees *una tantum* contributions of 75 Euros for ordinary satellite set-top boxes and access to broadband connections to the Internet and contributions of 150 Euros for digital terrestrial T-DVB set-top boxes. ■

nian phrase *acord parental* = parental agreement) written in white across the middle; 3) Productions unsuitable for children under 12. These should be marked with a red circle with the number 12 written in white in the centre; 4) Productions which children under 16 are prohibited from watching. The sign is a red circle containing the number 16; 5) Productions which are unsuitable for children under 18, for which the symbol is a red circle containing the number 18. The symbol must be clearly visible in the bottom right hand corner of the screen throughout the entire broadcast of the production concerned. Productions in categories 2 and 3 may only be shown after 8pm. Those unsuitable for children under 16 or under 18 may not be broadcast before 10pm. Various criteria relating to the content of all five categories are set out in the CNA decision. Decision no.78 was published on 16 August 2002 and entered into force thirty days later. ■

## RO – Measures to Protect Human Dignity and Personal Image Rights

Mariana Stoican  
Radio Romania  
International

On 21 August 2002, Decision no.80 of the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) concerning the protection of human dignity and personal image rights entered into force.

According to this Decision, freedom of opinion is a fundamental right in any democratic society; however, the exercise of the right of freedom of expression must not infringe personal dignity, honour or privacy, nor personal image rights.

On the other hand, the exercise of these rights should not be used to justify the concealment of information that is in the public interest. Matters of public interest, which are listed in Article 3, include facts or events at local or national level that affect the life of the community. When reporting these matters, journalists must

● *Decizia Nr. 80 privind protecția demnității umane și a dreptului la propria imagine (Decision no.80 of 13 August 2002 concerning the protection of human dignity and personal image rights), Monitorul Oficial al României No.619, 21 August 2002*

RO

## RO – CNA Decision on Advertising of Distilled Alcoholic Drinks

Mariana Stoican  
Radio Romania  
International

Decision no.112 of the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) of 8 October 2002 on the advertising of distilled alcoholic drinks will replace the current regulations on this subject in Romania from 1 January 2003. The CNA explained that the new rules were necessary because of the increasing

● *Decizia privind publicitatea la băuturi alcoolice distilate (Decision no.112 of the Consiliul Național al Audiovizualului (National Audiovisual Council – CNA) on advertising for distilled alcoholic drinks) of 8 October 2002, Monitorul Oficial al României No.763, 18 October 2002*

RO

## RO – CNA Decision on the Right of Reply and Correction

Mariana Stoican  
Radio Romania  
International

On 14 October 2002, in accordance with the provisions of the new Romanian Audiovisual Act (*Legea audiovizualului*), the *Consiliul Național al Audiovizualului* (National Audiovisual Council – CNA) adopted Decision no.114 on the right of reply and correction in broadcasting. The Decision also amends the time-period within which a natural or legal person can exercise their right to reply or correction. Article 4.3, for example, states that persons whose rights are infringed through false reporting or the transmission of inaccurate information may demand a review of the programme concerned up to

● *Decizia Nr. 114 privind dreptul la replică și rectificarea (Decision no.114 of the Consiliul Național al Audiovizualului (National Broadcasting Council – CNA) on the right to reply and correction in broadcasting) of 14 October 2002.*

RO

always be careful not to violate basic human rights and freedoms.

Article 5 of the Decision stipulates that any person accused of committing a crime shall be presumed innocent until a final court decision is reached. Every audiovisual programme must therefore respect this principle.

The CNA Decision goes on to state that everyone has the right to respect for their private and family life; unless the person concerned gives their consent, the transmission of news, debates and surveys concerning a person's private life is prohibited under the terms of Article 6.

Article 7 forbids the broadcast of recordings of people made without their consent on private property, unless the recording might (a) help prevent a crime, (b) prove that a crime took place, or (c) protect public health.

According to Article 8, recordings may not be made using hidden microphones or cameras. Article 9 states that recordings made with hidden cameras for entertainment purposes should not humiliate the persons being filmed and may only be broadcast if those persons give their consent after the recording is made.

Article 13 of CNA Decision no.80 bans the broadcast of anti-Semitic or xenophobic programme content and any kind of discrimination on grounds of race, religion, nationality, gender or ethnic origin.

Under Article 14, broadcasters may not show pictures of the victims of crimes or accidents. Witnesses to crimes may only be filmed if their identity is fully protected. ■

levels of alcohol consumption among young people, which was having a negative impact on society in general and on minors in particular. For that reason, and based on the provisions of the new Audiovisual Act (*Legea audiovizualului* No. 504/2002), the CNA has decided to prohibit the broadcast of all forms of advertising of distilled alcoholic drinks between the hours of 6am and 10pm. A list of "distilled alcoholic drinks" can be found in Government Decision no. 17/240/2000. Failure to comply with CNA Decision no.112 will result in a fine as stipulated in Article 91 of the Audiovisual Act. ■

20 days after it was broadcast. As required by Article 15, such an application must be submitted no later than 20 days after the broadcast. If it is rejected, the applicant may appeal to the CNA up to 15 days after receiving the broadcaster's reply (denial).

Breaches of the provisions of this Decision shall be punished in accordance with Articles 90 and 91 of Audiovisual Act no. 504/2002. When this Decision enters into force (on the day it is published in the Official Gazette), it will replace CNA Decision no.43/2001 (published in *Monitorul Oficial* no. 238 of 10 May 2001).

The CNA press release of 14 October 2002 explains that the rules governing the right to reply and correction in no way exclude the possibility of a person instigating legal proceedings if they believe their legitimate interests have been infringed. ■

## YU – New Media Legislation Adopted in Montenegro

Following the adoption of the new Broadcasting Act of Serbia (IRIS 2002-8: 11), the National Assembly of the Republic of Montenegro, in its session of 16 September 2002, adopted a set of new media legislation. It consists of the new Laws (1) on Media, (2) on Broadcasting and (3) on Public Broadcasting Services “Radio Montenegro” and “Television Montenegro”. However, the implementation of these laws is postponed until 1 May 2003 (presidential elections in Montenegro are scheduled for December 2002). The new media legislation of Montenegro has been prepared by the Working Group of the Secretariat for Information of Montenegro, which gathered a number of local experts and journalists, and is the result of an 18-month long endeavour made with full support of the OSCE mission as well as the Council of Europe.

The new Law on Media contains general provisions such as the rule that all the provisions of that law should be interpreted in accordance with the principles established in the European Convention of Human Rights (ECHR) and the practice of the European Court of Human Rights. It also lays down rules on establishing media outlets, distribution of media, provisions on the data about the identity of the media that must be published

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- Law on Media, Official gazette of Montenegro nr. 51/2002-1 of 23 September 2002
- Law on Broadcasting Official gazette of Montenegro nr. 51/2002-7 of 23 September 2002
- Law on Public Broadcasting Services “Radio Montenegro” and “Television Montenegro”, Official gazette of Montenegro nr. 51/2002-25 of 23 September 2002

SR

## RELATED FIELDS OF LAW

### AT – Draft Ministerial Amendment to Copyright Act

On 25 July 2002, the Austrian *Bundesministerium für Justiz* (Federal Ministry of Justice) submitted a draft ministerial amendment to the Copyright Act for further evaluation. The main purpose of the amendment is to bring the Act into line with Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society (Copyright Directive). However, the draft also clarifies and improves certain aspects of how the Act should be implemented and amends some elements of copyright contract law.

The ministerial draft finally brings Austrian copyright contract law onto the same level occupied by German copyright law between 1966 and the latest reforms. For this reason, the Ministry of Justice proposes firstly to lay down in law the principle that the granting of rights in

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- Draft Federal Act amending the *Urheberrechtsgesetz* (Copyright Act), available at: <http://www.justiz.gv.at/gesetzes/download/urheberrecht2002.pdf>

DE

### BA – Law on Communications

Due to the Parliamentary Assembly's failure to adopt the Law on Communications (a draft version has been awaiting action by the Council of Ministers for the last eighteen months), and bearing in mind the importance of such regulations in the context of fostering a competitive environment for the telecommunications sector, which should attract foreign investments aimed at stopping a deepening of the economic and social crisis in the country, the High Representative has enacted the

(so-called “*impresum*”), the section on rights and obligations in the activity of dissemination of information, provisions on the right of reply and the right of correction, a part on the foreign news media in Montenegro, penal provisions, and lastly transitory provisions. The text of the law is not only in accordance with the relevant European standards, but is also very similar to the draft regulation debated in Serbia. Therefore it may be concluded that both Republics of the present Yugoslavia shall have very similar general media acts.

The new Law on Broadcasting, apart from general provisions, contains provisions on the Montenegrin Broadcasting Agency, an independent regulatory authority introduced into the Montenegrin legal system. It comprises provisions on the procedure and conditions for issuing broadcasting licenses, cable, satellite and MMDS distribution systems, provisions on broadcasting tax (license fee), further rules on the Company for Carrying and Distribution of Broadcasting Signals (RDC), provisions on the conditions of constructing, use and maintenance of broadcasting, satellite, MMDS and cable distribution systems, public broadcasting services, prevention of illegal media concentration, advertising and sponsorship, supervision, penal provisions and transitory provisions. One may say that the Montenegrin Broadcasting Act adopts a model similar to the recently adopted Serbian one, but also contains some other provisions relating to RDC, the state-owned company for distribution of radio and TV signals, and more elaborate provisions on cable distribution.

Finally, the Law on Public Broadcasting Services “Radio Montenegro” and “Television Montenegro” determines the rights and obligations of Public Enterprise “Radio Television Montenegro” (RTCG), its responsibilities, financing and internal organization and lastly the property of RTCG. This Act establishes the legal framework for the transition of Radio Television Montenegro from state radio-television to a public service broadcaster. ■

relation to unknown forms of exploitation are invalid. Secondly, it hopes to give legal force to the so-called “theory of the purpose of assignment” not only as a rule to be applied in cases of doubt, but as an incumbency upon contracting parties to specify the types of use to which the exploitation right extends (the first point mentioned above is essentially derived from this). Thirdly, it intends to insert a paragraph dealing with best-sellers.

The governmental crisis and the abrupt end to the legislative period meant that the ministerial draft was hurriedly shortened to include only the parts needed to transpose the Copyright Directive. It was placed in skeleton form on the agenda for the Cabinet meeting held on 17 September 2002. However, it was soon removed and was therefore not discussed either by the Cabinet or by Parliament. A government proposal or an independent motion by MPs is therefore unlikely to materialise before the National Assembly elections on 24 November 2002. It therefore appears doubtful whether the Act will be brought into line with the Copyright Directive before the deadline of 22 December 2002. ■

Law on Communications of Bosnia and Herzegovina (No. 52/02, 21 October 2002).

Just a reminder that in March 2001 the former High Representative issued a Decision creating a single regulator for the communications sector in BiH, combining regulatory responsibilities for telecommunications, formerly under the Telecommunications Regulatory Agency (TRA), with those for broadcasting, formerly under the Independent Media Commission (IMC) (see IRIS 2002-3: 12, IRIS 2001-4: 4). The single Communications Regulatory Agency (CRA), as an independent state-level agency,

- VIII. Radio and Telecommunications Terminal Equipment
- IX. Communications Regulatory Agency
- X. Procedural Provisions
- XI. Transitional and Final Provisions

Article 1 – Scope of the Law, deserves to be cited:

1. This Law regulates communications in Bosnia and Herzegovina, and the establishment and work of the Communications Regulatory Agency of Bosnia and Herzegovina in accordance with the Constitution of Bosnia and Herzegovina, which provides for the establishment and operation of common and international communications facilities.

2. Communications shall include telecommunications, radio, broadcasting (including cable television) and associated services and facilities.

3. This Law is without prejudice to telecommunications equipment installed and operated exclusively for the purpose of public security and defense and for the Communications Regulatory Agency. However, the frequency used by such equipment shall be agreed with the Communications regulatory Agency.

This Law clearly imposes responsibilities on the state-level institutions of BiH with respect to the communications sector. This Decision should represent an important step forward on the road to creating a market-oriented communications sector in the country, which primarily means a viable industry, lower prices and better services for all citizens. ■

has continued the ongoing work of the IMC and the TRA, but it needed to be placed on a formal legal footing.

The Law on Communications of BiH shall replace the Telecommunications Law of BiH (*Official Gazette of BiH* No. 10799), and will enter into force pursuant to Article 50, but on an interim basis, until the Parliamentary Assembly of BiH adopts the same in due form, without amendment and with no conditions attached.

The body of Law consists of XI chapters and 50 articles:

- I. Introduction and General Provisions
- II. General Provisions for Telecommunications Infrastructures
- III. Telecommunications Services
- IV. Universal Telecommunications Services
- V. Telecommunications Market Competition
- VI. Addressing and Numbering
- VII. Provisions on Radio Frequency Spectrum

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● OHR Press Release, "High Representative Enacts Key Economic Legislation", available at: [http://www.ohr.int/ohr-dept/presso/press/default.asp?content\\_id=28192](http://www.ohr.int/ohr-dept/presso/press/default.asp?content_id=28192)

● Law on Communications of Bosnia and Herzegovina No. 52/02 of 21 October 2002

EN

## CZ – Supreme Court Ruling

On 24 July 2002, the Supreme Court of the Czech Republic quashed Decision no. 25 T 133/2000 of the Prague District Court (*Praha 7*). As a result of the Decision, the publisher of the book "*Mein Kampf*" (in Czech) had been sentenced to three years in prison suspended for a five year probationary period, and fined CZK 2 million (EUR 65,000) for supporting and promoting a movement which aimed to restrict citizens' rights and freedoms.

The *Praha 7* District Court's original decision was made on 5 November 2001. The Prague Municipal Court then dismissed an appeal. The accused had consequently demanded a Supreme Court review. The Supreme Court upheld the appeal and quashed the original decision.

The Supreme Court's verdict was based on the following grounds. It was possible that promotion of, or support for, a particular movement could be expressed through the publication of a book and this could constitute an offence. However, the movement concerned had to exist at the time when the offence took place. The decision of

the court of first instance had been based on an incorrect legal assessment of the alleged offence and on inaccurate factual observations. The court had not dealt with the facts that were relevant to whether an offence had taken place. It had therefore made factual observations that were irrelevant to the question of guilt and amounted to a personal interpretation of past or current events. In the Supreme Court's view, fascism was a movement that no longer existed. The law also required that an actual movement should be at issue, but the Supreme Court did not consider anti-Semitism to be a movement, but rather an ideology or opinion. Of course, there were various neo-fascist movements in Europe. However, the court had heard no evidence regarding these contemporary movements before making the original decision. More proof was therefore needed in this area. The case was referred back to the public prosecutor's office for *Praha 7*.

The views of the Supreme Court are legally binding on the public prosecutor's office and District Court. In the new proceedings, it will have to be shown what kind of movement was promoted or supported by the publication of the book. There have been varied reactions to the Supreme Court's decision, which has been criticised by the Czech Minister for Justice and the Minister of the Interior. ■

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● Decision of the *Nejvyšší soud České republiky* (Supreme Court of the Czech Republic) No. 5 Tdo 449/2002, 24 July 2002,

<http://www.nsoud.cz/rozhod.php?action=read&id=9218&searchstr=>

CS

## IE – Problems with Telecoms Reforms

At the end of August 2002, the Director of Telecommunications Regulation and the Competition Authority made a joint submission to the European Commission's Consultation on the Draft Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector (see *IRIS Extra*: September 2002).

While welcoming the Draft Recommendation, the two bodies expressed their apprehension that it did not take into account the various stages of market development in Member States. For example, the later liberalisation of the Irish telecommunications market means that effective competition has not been fully attained in certain sectors, such as the mobile phone market and pay-tele-

vision services, and the recent economic downturn affecting the telecommunications sector worldwide has also had repercussions for the Irish market. The document also highlights the problems of double marginalisation (*i.e.*, when market power exists at both wholesale and retail levels) and the non-inclusion of effective retail broadcasting markets in the Draft Recommendation. The joint submission suggests that some form of impact assessment of the provisions in the Draft Recommendation be undertaken and calls for the diversity across the European Union to be recognised through flexibility in the regulatory framework so that all Member States move towards conformity in regulation.

Meanwhile, the plans to regulate satellite services on the same basis as cable and MMDS services, announced by

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the Director of Telecommunications Regulation in March 2002, have been strongly condemned by Sky Television. Currently, Sky is not regulated in the Irish market, as none of its services are uplinked from Ireland. Instead, Sky uplinks its services from the UK to the Astra and Eutelstat satellites, which use orbital slots registered in Luxembourg and France respectively. Sky does now,

- "Joint Response to Consultation on the European Commission's Draft Recommendation on Relevant Product and Service Markets within the Electronic Communications sector", ODTR Doc. No. 02/74, 29 August 2002, available at: <http://www.odtr.ie/docs/odtr0274.doc>
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- *IRIS Extra*, September 2002, available at: [http://www.obs.coe.int/oea\\_publ/iris/archives.html](http://www.obs.coe.int/oea_publ/iris/archives.html)

## PL – Changes to Copyright Law in the Light of Digitisation

On 28 October 2002 the Polish Parliament adopted an Amendment to the Act on Copyright and Neighbouring Rights of 4 February 1994 (with later amendments). Subsequently, on 15 November 2002 this new bill was signed by the President of the Republic of Poland. It aims at a further harmonisation of Polish legislation with EC law (notably the Directives 93/83/EEC, 93/98/EEC, 91/250/EEC and 92/100/EEC) and new treaties that Poland plans to ratify in the nearer future (namely the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, both dated 20 December 1996).

The popularisation of digital technology leads to a successive change of ways and scope of exploiting copyrighted works and subject matters of neighbouring rights. These creative works can easily be fixed and made available to the public in electronic form. The wide dissemination of such works on the Internet should be without prejudice to the legitimate interests of their creators. That is why the bill introduces new regulations concerning the exploitation of works, artistic performances, phonograms, videograms and broadcast programmes.

A new kind of exploitation will be introduced in form of the right of making available to the public of a work, fixation of artistic performance, phonograms, videograms, or fixation of broadcast programmes in such a way that members of the public may have access to them from a place and at a time individually chosen by them.

In addition, new provisions on rights to broadcast are introduced. Till now the Act on Copyright and Neighbouring Rights provides that notwithstanding the rights of authors and artistic performers, radio and television organisations have an exclusive fixation right as regards their programs, which they may reproduce by a specific technique and transmission, or have them reproduced by another radio or television organisation. The draft law enlarges the scope of the exclusive rights of broadcasters also to include retransmission, the putting into circulation of fixations of their programmes, the exhibition at the places, which can be accessed against a fee, and

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- *Ustawa z dnia 28 października 2002 r. o zmianie ustawy o prawie autorskim i prawach pokrewnych (Act of 28 October 2002 amending the Act on Copyright and Neighbouring Rights of 4 February 1994)*, available at: [http://ks.sejm.gov.pl:8010/proc4/ustawy/735\\_u.htm](http://ks.sejm.gov.pl:8010/proc4/ustawy/735_u.htm)

PL

however, carry the Irish terrestrial services, RTÉ (the national public service broadcaster), TV3 (the only national commercial television broadcaster) and TG4 (the Irish-language (public service) television broadcaster) on its digital platform (see IRIS 2002-4: 7 and IRIS 2001-8: 11) and agrees that they should be regulated because RTÉ is providing an uplinking service, but they only form a very small part of Sky's overall operations. The Director of Telecommunications Regulation expects that the EC Telecoms Package (see IRIS 2002-3: 4 and IRIS 2002-1: 5), due to be implemented in the Member States by July 2003, will give her power to regulate satellite services, such as Sky.

The difficulty of competing with established cable and satellite providers may have been a factor in the decision of the sole bidder for a licence to operate a national digital television network to withdraw its application more than a year after the Government had initiated the competition for the franchise. The decision places the future of the Government's planned terrestrial television network and the sale of RTÉ's transmission network in doubt. The Minister for Communications is due to outline a new strategy for digital television within weeks. ■

finally the making available to the public in such a way that members of the public may have access to them from a place and at a time individually chosen by them. The draft also stresses that those exclusive rights of broadcasters shall be exercised without detriment to the rights of producers of phonograms and videograms.

Moreover, the draft provides new legal definitions of transmission, retransmission, putting into circulation, leasing, renting, and exhibition.

It also specifies the scope of copyright protection stating that it extends only to expressions and not to inventions, ideas, procedures, methods of operation or mathematical concepts as such.

Furthermore, the draft introduces regulations on the moral rights of artistic performers. It also changes the way of determining the duration of protection of an audiovisual work. The economic rights to audiovisual works are protected for a period of 70 years starting from the death of the rightsholder, but it excludes authors of films from this group of creators.

A provision on compulsory licence for cable operators that had raised some controversies was deleted.

It should be noted that the draft law envisages that except for exhaustion of rights within the territory of states with which the Republic of Poland has an agreement on the establishment of a free trade zone, a typically regional exhaustion rule will apply; this means that the putting into circulation of an original or a copy of a work on the territory of the European Economic Area will exhaust the rights to authorize further circulation of such works in a tangible form within the Republic of Poland's territory. This does, however, not apply to rental and lending rights.

Most of provisions of this bill are due to enter into force on 1 January 2003. Some of them, however, will enter into force only upon the day of accession of Poland to the EU. This applies, for example, to the provisions referring to regional exhaustion and the provisions enlarging the scope of protection provided under the Act on Copyright and Neighbouring Rights to comprise works whose creator is a citizen of a Member State of the European Union.

Further works aimed at drafting other amendments to the Act on Copyright and Neighbouring Rights are planned to enter soon. They will concentrate on the most problematic issues, notably the creation of a new legal framework for organisations for collective management of rights and a Copyright Commission. ■

## US – FCC Reevaluates Mass Media

In early October, 2002, the Federal Communications Commission (FCC) released twelve studies as part of its review of media ownership rules. The studies suggested that current media ownership rules are outdated.

FCC Chairman Michael Powell believes that modifications are necessary if the rules are to survive the judicial process, since courts have struck down several rules on the grounds that they lacked adequate justification. These studies are supposedly a foundational basis to justify rule changes, and may indicate that the FCC is prepared to ease ownership limits. According to Chairman Powell, "as the courts have made clear, it is critical that the FCC have a solid factual base to support its media ownership rules. Collectively, these studies represent an unprecedented data-gathering effort to better understand market and consumer issues so that we may develop sound public policy."

Supporters of liberalizing the ownership limits claim that the sweeping changes in the media landscape over

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● **Television Stations, Inc. v. Federal Communications Commission, 280 F. 3d 1027 (D.C. Cir. 2002)**

● **In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, September 20, 2001, FCC 01-262**

EN

the past 30 years have made certain rules unnecessary. Earlier this year, a federal appeals court found serious problems with the FCC's national broadcast cap, which bars any one company from reaching more than 35% of the national audience (case of Fox Television Stations, Inc. v. Federal Communications Commission). The studies indicate that there may be little need for the cap, considering the rise of other outlets, whether cable or satellite.

Critics of the studies include the Center for Digital Democracy and the Caucus for Television Producers, Writers and Directors. The Center for Digital Democracy questions whether the studies offer an unbiased view of the media rules. According to Jeff Chester, the Center's Executive Director, "the studies released today reveal a deeply flawed perspective, that while ratifying the Chairman's view fails to adequately assess the realities of the news and entertainment media marketplace."

The Commission's media ownership working groups insist, however, that the studies are not a final product but a "critical first step in evaluating" the rules. The studies should figure significantly in the Commission's recently launched biennial review of the rules mandated by the 1996 Telecommunications Act.

Comments on the studies are due in early December, 2002, although some, including FCC Commissioner Copps believe the Commission's 90-day comment cycle may not be long enough here. Copps has said that he was "less interested in getting the proceeding done by spring," than in "getting it done right."

The FCC expects to complete its review early next year when it is anticipated that the agency will unveil a new set of ownership rules. ■

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