iris
LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

2003 - 1

INTERNATIONAL

COUNCIL OF EUROPE

EUROPEAN UNION

NATIONAL

BROADCASTING

FILM

NEW MEDIA/TECHNOLOGIES

RELATED FIELDS OF LAW

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

Dear IRIS subscribers,

Susanne Nikoltchev
IRIS Coordinator
Head of the Legal Information Department

I hope you have had a good start to the new year. We are looking forward to sending you our IRIS publications again in 2003. In addition to the ten issues of the IRIS newsletter and the five accompanying *IRIS plus* articles, this year we will be publishing several editions of *IRIS Special*. The first, which will be released right at the start of the year, contains comprehensive information about media co-regulation in Europe. The second *IRIS Special*, dealing with the definition of European audiovisual works, will appear in the spring. A third is currently being planned. You can already obtain the *IRIS plus* Collection "Key Legal Questions for the Audiovisual Sector", in which the *IRIS plus* articles are summarised in four chapters entitled "Better Governance", "Convergence", "Copyrights and Digitalisation" and "Financing". Please order your copy from Markus.Booms@obs.coe.int

During the coming year, we will also be introducing another very special product: the IRIS Merlin database. IRIS Merlin will provide a unique opportunity to consult all the information contained in the IRIS newsletter via the Internet. In other words, you will soon enjoy rapid, personalised access to information about all events that are relevant to the audiovisual sector from a legal perspective. I am sure that this new product will prove extremely useful in your daily work.

I wish you a happy and successful year. ■

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Case of Demuth v. Switzerland

In 1997, Mr. Demuth complained to the European Court of Human Rights that the decision of the Swiss *Bundesrat* (Federal Council) refusing to grant Car Tv AG a broadcasting licence for cable television ran counter to Article 10 of the European Convention on Human Rights (freedom of expression). He considered that the refusal was arbitrary and discriminatory. In a decision of 16 June 1996, the Federal Council had decided that there was no right, either under Swiss law or under Article 10 of the European Convention, to obtain a broadcasting licence. With reference to the instructions for radio and television listed in Section 3 § 1 and Section 11 § 1 (a) of the

• **Publisher:**
European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG
Tel.: +33 (0)3 88 14 44 00
Fax: +33 (0)3 88 14 44 19
E-mail: obs@obs.coe.int
http://www.obs.coe.int/

• **Comments and Contributions to:**
IRIS@obs.coe.int

• **Executive Director:** Wolfgang Closs

• **Editorial Board:** Susanne Nikoltchev, Co-ordinator – Michael Botein, Communications Media Center at the New York Law School (USA) – Harald Trettenbrein, Directorate General EAC-C-1 (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Bernt Hugenholtz, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Christophe Poirel, Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

• **Council to the Editorial Board:**
Amélie Blocman, Charlotte Vier, *Victoires Éditions*

• **Documentation:** Edwige Seguenny

• **Translations:** Michelle Ganter (co-ordination) – Véronique Campillo – Paul Green – Isabelle Herold-Vieuxblé – Marco Polo Sàrl – Katherine Parsons – Stefan Pooth – Patricia Priss

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, 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

Bundesgezetz über Radio und Fernsehen (Radio and Television Act - RTA), the Federal Council was of the opinion that the orientation of the programme content of Car Tv AG was not able to offer the required valuable orientation to comply with the general instructions for radio and television, as the programme focused mainly on entertainment and reports about automobiles.

In its judgment of 5 November 2002, the European Court confirmed its earlier case-law that the refusal to grant a broadcasting licence is to be considered as an interference with the exercise of the right to freedom of expression, namely the right to impart information and ideas under Article 10 para. 1 of the Convention. The question is whether such an interference is legitimate. According to the third sentence of Article 10 para. 1, Member States are permitted to regulate by means of a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. It remains to be determined, however, whether the manner in which the licensing system is applied satisfies the relevant conditions of paragraph 2 of Article 10.

The Court was of the opinion that the relevant provisions of the licensing system of the RTA were capable of contributing to the quality and balance of programmes. This was considered a sufficient legitimate aim, albeit not directly corresponding to any of the aims set out in Article 10 para. 2. The Court also referred to the particular political and cultural structures in Switzerland that necessitate the application of sensitive political criteria such as cultural and linguistic pluralism and a balanced federal policy. The Court saw no reason to doubt the validity of these considerations, which are of considerable importance for a federal State. Such factors, which encourage in particular pluralism in broadcasting may legitimately be taken into account when authorising radio and television broadcasts. The Court came to the conclusion that the Swiss Federal Council's decision, guided by the policy that television programmes shall to a certain extent also serve the public interest, did not go beyond the margin of appreciation left to national authorities in such matters. The Court also observed that the refusal to grant the requested licence was not categorical and did not exclude a broadcasting licence once and for all. Although the Court explicitly recognised that opinions may differ as to whether the Federal Council's decision was appropriate and whether the broadcasts should have been authorised in the form in which the request was presented, the Court reached the conclusion that the restriction of the applicant's freedom of expression was necessary in a democratic society. The Court took special note of the Government's assurance that a licence would indeed be granted to Car Tv AG if it included cultural elements in its programme. The Court considered it unnecessary to examine the Government's further ground of justification for refusing the licence, contested by the applicant, namely that there were only a limited number of frequencies available on cable television. By 6 votes to 1, the Court reached the conclusion that there had been no violation of Article 10 of the Convention. The dissenting opinion of Judge G. Jörundsson is annexed to the judgment. ■

Dirk Voorhoof
Media Law Section of the Communication Sciences Department Ghent University

● Judgment of the European Court of Human Rights (Second Section), Case of Demuth v. Switzerland, Application no. 38743/97 of 5 November 2002, available at: http://www.echr.coe.int

EN

Committee of Ministers: Adoption of Anti-racism Protocol to Cybercrime Convention

On 7 November 2002 the Council of Europe's Committee of Ministers adopted an additional protocol to supplement the Cybercrime Convention, by providing for the criminalisation of acts of a racist and xenophobic nature committed through computer systems. This marks the culmination of a process of elaboration that was conceived even before the finalisation of the text of the Cybercrime Convention itself (see IRIS 2001-5: 3, IRIS 2001-7: 2, IRIS 2001-9: 4, IRIS 2001-10: 3, IRIS 2002-1: 3 and IRIS 2002-3: 3).

The preambular section of the Additional Protocol acknowledges that one of the issues which weighed on the drafting process was the difficult balancing act to be performed between "freedom of expression and an effective fight against acts of a racist and xenophobic nature". Relevant international standards are also mentioned as having informed the drafting process.

The drafters have opted for a broad definition of "racist and xenophobic material": it encompasses "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors" (Article 2).

The Additional Protocol enjoins States Parties to adopt the legislative and other measures necessary to criminalise under their national systems of law a number of activities, "when committed intentionally and without right" via computer systems, including the dissemination of racist and xenophobic material (Article 3); making racist and xenophobic motivated threats (Article 4) and racist and xenophobic motivated insults (Article 5). The latter two offences specify as one of their constituent elements that the threats or insults respectively would target: "(i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics".

The collective dimension to racial or xenophobic threats and insults reverberates in the Additional Protocol's provision on denial, gross minimisation, approval or justification of genocide or crimes against humanity (Article 6). This is true insofar as the purpose of Article 6, as outlined in the Explanatory Report to the Additional Protocol, is to prevent (the memory of) victims of such atrocities from being insulted and thereby eroding human dignity.

The final substantive provision of the Protocol (Article 7) focuses on aiding and abetting the commission of any of the offences set out in the Protocol.

The entry into force of the Protocol is contingent on the expression by five signatory States of the Cybercrime Convention proper of their consent to be bound by its provisions. ■

Tarlach McGonagle
Institute for Information Law (IViR) University of Amsterdam

● "The Council of Europe fights against racism and xenophobia on the Internet", Press Release of the Council of Europe, 7 November 2002, available at http://www.coe.int/T/E/Communication_and_Research/Press/Theme_Files/Cybercrime/e_CP554.asp#TopOfPage

● Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (& Explanatory Report), PC-RX(2002)24 (provisional version) of 7 November 2002, available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Cybercrime/Racism_on_internet/PC-RX(2002)24E.pdf

EN-FR

EUROPEAN UNION

Court of First Instance: Decision on Media II Programme for Development and Distribution of European Audiovisual Works

Tarlach McGonagle
Institute for Information Law (IViR)
University of Amsterdam

The Court of First Instance recently delivered a judgment concerning the Media II Programme (1996-2000) – the forerunner to the European Union's current Media Programme (see IRIS 2000-1: 3, IRIS 2001-1: 6 and IRIS 2002-6: 6). The case involved an application for the annulment of a decision of the European Commission on the issue of recognition of eligibility for the purposes of Media II.

This programme, created by Council Decision 95/563/EC on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II – Development and distribution) (1996-2000), evolved to include the so-called "Support for the Transnational Distribution of European Films and the Networking of European Distributors – The Automatic Scheme". The scheme involved two stages: the determination of distributors' eligibility for the European Community subsidies on offer and the actual granting of the said subsidies. Awarded by the European Commission, the subsidies in question were intended for the purpose of "reinvestment".

Central to the instant case was a dispute over the Commission's interpretation of the guidelines for the submission of proposals to obtain financial support under the Automatic Scheme. The applicant company, Scanbox Entertainment A/S, held the exclusive distribution rights for a certain number of specified films in Denmark, Norway and Sweden. On 30 June 2000, the Commission informed the applicant company that its claim to be recognised as the distributor of those films for the purposes of the Automatic Scheme had been rejected in favour of a similar claim by *Svensk Filmindustri AB* ("SF"). The latter had been contractually bound to the applicant for the local distribution of the films in question until 27 October 1999.

According to the Court, the Commission's decision was vitiated by several errors of assessment. First, it took the view that the applicant should have been recognised as the distributor for the purposes of the Automatic Scheme as it held the (exclusive) distribution rights and also because it, in effect, bore all of the distribution costs. Furthermore, it was held that the applicant's line of activity corresponded more to the objectives of the scheme, which were to encourage the distribution of European films outside their country of origin. As such, the subsidies are intended for distributors rather than for cinema operators. In this connection, SF was deemed to have played a subordinate distribution role (i.e. as sub-distributor) to that of the applicant insofar as the relevant films were concerned. As set out in the guidelines in explicit terms, sub-distributors (or physical distributors) cannot be considered as distributors proper. The Court also found that SF did not "negotiate" the release date for the films in question – another requirement set out in the guidelines for the scheme. ■

● **Judgment of the Court of First Instance (Fifth Chamber) of 15 October 2002 in Case T-233/00, Scanbox Entertainment A/S v. the Commission of the European Communities, available at: http://curia.eu.int**

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

Council of the European Union: Approval of Draft Conclusions on TWF Directive

Tarlach McGonagle
Institute for Information Law (IViR)
University of Amsterdam

At its meeting of 11-12 November 2002, the Council of the European Union approved a number of conclusions concerning the "Television without Frontiers" Directive. These conclusions will be adopted without further discussion at the Council's next session.

The Conclusions stress the importance of drawing on Member States' shared experience regarding, *inter alia*, statutory legislation and various regulatory types (eg. co- and self-regulation). They also point out the relevance to any discussion of developments in the broadcasting sector of new means of delivering audiovisual content, as exemplified, for instance, by interactive media. In addition, they reaffirm the main guiding objectives of the Directive, which include:

- "to ensure the free movement of television broadcasting services in the Community, on the basis of the country of origin principle
- to promote cultural and linguistic diversity and the strengthening of the European audiovisual industry
- to reinforce the indispensable role of television broadcasting in the democratic, social, and cultural life of society"

The Conclusions were formulated in anticipation of the imminent publication by the European Commission of the fourth report on the implementation of the "Television without Frontiers" Directive in Member States. It is expected that this report will serve as a point of departure for the likely preparation of proposals regarding the Directive and its future. ■

● **2461st Council Meeting (Education, Youth and Culture), Brussels, 11/12 November 2002, available at: http://ue.eu.int/pressData/en/educ/73183.pdf**

EN

Council of the European Union: Approval of Draft Resolution on Interactive Media Content

On 11 November 2002, the Council of the European Union approved a draft Resolution on Interactive Media Content in Europe. The draft Resolution will be formally adopted, without further discussion, at the next Council meeting.

The promotion of interactive media content forms part of the Council's more general objectives, such as the establishment of the European Union as a dynamic knowledge-based economy and the development of cultural and creative industries within the European Union.

The Council emphasises the importance of ensuring quality in interactive media content by combining artistic freedom and innovation with cultural and linguistic diversity. High-quality content also forms part of the EU industrial policy objective to gain a fair share of the market for interactive media content. This market offers many divergent cultural and media policy opportunities both for the public and private sectors. However, despite its considerable potential, investments and revenues are still at an initial stage. Hence it is recommended that financing be made available to develop creative interactive media content. Other means of promoting this market are the development of European networks of relevant professionals and the distribution and marketing of European interactive content.

The draft Resolution therefore encourages EU Member States to draw attention to a variety of ways in which to develop this potential. For example, by collecting information and experience of interactive media content pro-

Nynke Hendriks
Institute for Information Law (IViR)
University of Amsterdam

duction and by considering how this content may be used to promote and disseminate cultural and linguistic diversity across Europe. National actions, experiences and networks may enhance the development and distribution of high-quality interactive media content. The protection of (young) consumers must at all times be taken into account.

The growing market for interactive media content provides wide-ranging cultural, linguistic and economic challenges for the public and private sectors of the Member States of the European Union and the Community as a whole. In addition to the Member States, the Commission is also invited by the draft Resolution to consider these challenges at the European level with a view to instigating possible Community actions, if necessary, to ensure the cultural diversity of the content and the economic development of this market. ■

● 2461st Council Meeting (Education, Youth and Culture), Brussels, 11/12 November 2002, available at: http://ue.eu.int/pressData/en/educ/73183.pdf

EN

European Commission: Report on Implementation of Articles 4 & 5 of the TWF Directive

Nynke Hendriks
Institute for Information Law (IViR)
University of Amsterdam

On 8 November 2002, the European Commission adopted the fifth report on the implementation in 1999 and 2000 of Articles 4 and 5 of the "Television without Frontiers" Directive. Articles 4 and 5 of this Directive lay down that broadcasters must devote minimum percentages of transmission time and programming budgets to European works. A survey on compliance with these articles is conducted every two years (for earlier reports, see, in reverse chronological order: IRIS 2000-9: 5, IRIS 1998-5: 4 and IRIS 1996-9: 8). In the instant report, the Commission notes a general increase in the average transmission time and actual broadcasting of European works.

Article 4 of the Directive provides that Member States must, where practicable and by suitable means, devote the majority of their transmission time to European works. Most Member States easily exceeded this target, having achieved an average of 60.7% in 1999 and 62.2% in 2000.

Article 5 of the Directive requires that Member States reserve, were practicable and by suitable means, a minimum of 10% of their broadcasting time or programming budget for European works by independent producers and, in particular, recent works. This target was also met by most Member States (85%). The average broadcasting time amounted to 37.5% in 1999 and to 40.5% in 2000.

The overall compliance with the quotas laid down in Articles 4 and 5 of the Directive may also be regarded as positive in the light of a considerable expansion of the number of broadcasters in Europe, increasing from 550 at the beginning of 1999 to 820 at the beginning of 2001. The Commission has furthermore identified the main reasons given to explain cases of non-compliance, which include: the broadcaster's programmes are aimed at a very specific niche market; some individual members of a broadcasting group might not have met the minimum percentage although the group as a whole has met these percentages; the parent company of a subsidiary is located outside the European Union, and finally, the broadcaster is new.

According to the Commission, the reporting period (1999 and 2000) generally shows a satisfactory application by the Member States of Articles 4 and 5 of the Directive. This was the first report to be carried out since the entry into force on 1 January 1999 of guidelines elaborated for the purpose of assisting Member States in their monitoring obligations *vis-à-vis* the implementation of Articles 4 and 5 (see IRIS 2000-9: 5). Some problems may be presented by minority channels and the Commission notes that increased control and monitoring of these channels may be necessary. ■

● "Television broadcasters are devoting an average of 62% of their transmission time to European works, and steadily improving the "quotas" provided for in the "Television without Frontiers" Directive", Press Release of the European Commission of 8 November 2002, IP/02/1632, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1632|0|RAPID&lg=EN&display=

DA-DE-EN-ES-FR-IT

● Fifth Communication from the Commission to the Council and the European Parliament on the application of Articles 4 and 5 of Directive 89/552/EEC "Television without Frontiers", as amended by Directive 97/36/EC, for the period 1999-2000, COM (2002) 612 final of 8 November 2002, available at: http://europa.eu.int/comm/avpolicy/regul/twf/art45/comm2002_612final_en.pdf

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

European Commission: Launch of Investigation into Planned Take-over

Tarlach McGonagle
Institute for Information Law (IViR)
University of Amsterdam

The European Commission has announced its decision to commence an in-depth investigation into the planned take-over of Italian pay-TV company, *Telepiù*, by Newscorp, an Australian-owned company. The Commission's investigation will focus primarily on the effects the merger would be likely to have on the Italian pay-TV market. As notified to the Commission on 16 October 2002, under Newscorp's proposed acquisition of *Telepiù* (which is currently owned by Vivendi Universal), *Telepiù* would then be merged with Stream (an already-existing pay-TV concern in Italy which is controlled jointly by Newscorp and Telecom Italia, an arrangement underpinned by a shareholders' agreement). In the course of the investigation, the Commission will assess, *inter alia*, whether the proposed acquisition is likely to prove conducive to the emergence of new market-players, thereby forestalling the establishment of a monopoly situation in the Italian pay-TV market. At the moment, *Telepiù* and Stream are the only providers of pay-TV (as such) in Italy. ■

● "Commission opens in-depth probe into the acquisition of Telepiù by Newscorp", Press Release of the European Commission of 2 December 2002, IP/02/1782, available at: http://europa.eu.int/rapid/cgi/rapcgi.ksh?p_action.gettxt=gt&doc=IP/02/1782|0|RAPID&lg=EN&display=

EN-ES-FR-IT

European Commission: Proposed New Programme for Monitoring of *e*Europe

The European Commission has put forward a proposal for a Decision by the Council of the European Union on the adoption of a multi-annual programme (2003-2005) for the monitoring of the Action Plan, "*e*Europe 2005: An information society for all" (see IRIS 2002-7: 4), in regard to the dissemination of good practices and the improvement of network and information security.

Tarlach McGonagle
Institute for Information Law (IViR)
University of Amsterdam

The programme, if adopted, would have as its main goals the monitoring of the performance of and within Member States in this regard, both in their own right and also in comparison with other best examples from the rest of the world, and in accordance with the relevant findings, the elaboration of suitable policies. The programme's aims would also include facilitating initiatives and structures designed to further the exchange of best practices. Envisaged too are analyses of the Information Society from socio-economic perspectives, in particular in terms of industrial competitiveness and social cohesion. Another objective would be "to enhance national and European efforts for improving network and information security and to foster the development of broadband rollout."

It is envisaged that these objectives would be realised through, *inter alia*, data collection and analysis on the basis of a new set of benchmarking indicators, including at the regional level, if deemed appropriate. Other strategies would involve commissioning studies to identify good practices and providing financial support for pertinent other initiatives, such as organising specialised gatherings and conferences and carrying out surveys and structured information-exchange. The proposed budget for the multi-annual programme would be EUR 25 million, according to draft Article 4 of the proposed Council Decision. ■

- **Proposal for a Council Decision adopting a multi-annual programme (2003-2005) for the monitoring of eEurope, dissemination of good practices and the improvement of network and information security (Modinis) (presented by the Commission), COM (2002) 425 final – 2002/0187(CNS), Official Journal of the European Communities C 291 E/243, 26 November 2002, available at:**
http://europa.eu.int/eur-lex/en/oj/2002/ce29120021126en.html
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

European Parliament: First Reading Vote on Proposed Tobacco Advertising Directive

Nynke Hendriks
Institute for Information Law (IViR)
University of Amsterdam

On 20 November 2002, the European Parliament cast its First Reading vote on the proposed Tobacco Advertising Directive. MEPs rejected several amendments that would have restricted the scope of the Directive. They did, however, adopt an amendment ensuring the competence of the individual Member States to regulate matters concerning tobacco advertising and sponsoring not covered by the proposed Directive, for example, indirect advertising and sponsorship without cross-border effects.

The First Reading vote follows the Commission's proposal for a Tobacco Advertising Directive of May 2001. The proposal takes into account the October 2000 judgment of the European Court of Justice in Case C-376/98 (see IRIS 2000-8: 3). This judgment had annulled the previous Tobacco Advertising Directive (98/43/EC) as the Court ruled that a full ban on any kind of tobacco advertising and sponsorship could not be adopted on the basis of Article 95 of the EC Treaty (measures that have as their object the establishment and functioning of the internal market). However, the Court noted explicitly that a Directive prohibiting certain forms of tobacco advertising and sponsorship might be based on Article 95 of the EC Treaty, subject to the limits laid down by the Court.

The current proposal for the Tobacco Advertising Directive has complied with these limits. The proposed Directive intends to remove the increasing trade barriers posed to the free movement of products and services as a result of the widely divergent regulations in the field of tobacco advertising and sponsorship in the individual Member States. The harmonisation of rules in this field will lead to a general ban on tobacco advertising in the press and on the Internet. The proposed ban on tobacco advertising via the radio and on sponsorship of radio programmes is in line with the rules on television advertising under the "Television without Frontiers" Directive. The proposal furthermore includes a ban on tobacco sponsorship of events or activities with cross-border implications. ■

- **"Byrne: Parliament's support clears way for EU ban on tobacco advertising", Press Release of the European Commission of 20 November 2002, IP/02/1716, available at:**
http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1716|0|RAPID&lg=EN&display=
DE-EN-FR
- **Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (presented by the Commission pursuant to Articles 47(2), 55 and 95 of the EC Treaty), 30 May 2001, COM (2001) 283 final, available at:**
http://europa.eu.int/comm/health/ph/programmes/tobacco/publication.htm
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV
- **Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products, Official Journal of the European Communities L 213/09, 30 July 1998, available at:**
http://europa.eu.int/eur-lex/en/archive/1998/l_21319980730en.html
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

European Ombudsman: Suggestions for Draft Constitutional Treaty

Tarlach McGonagle
Institute for Information Law (IViR)
University of Amsterdam

The European Ombudsman recently proposed that openness and subsidiarity be included among the fundamental principles enumerated in the preliminary draft Constitutional Treaty for the European Union which was presented to a plenary session of the European Convention on 28 October 2002. He also pleaded for a European administrative law that would constitute a legal basis for securing "an open, accountable and service-minded" administrative regime for the European Union. A third recommendation was that citizens should be informed of the remedies available to them in the event of their fundamental or other rights being breached. Such remedies should be broader than traditional court-based solutions and include recourse to ombudsmen as well as petition-oriented possibilities. Such measures would, he argued, constitute confidence-building measures for citizens vis-à-vis the institutions of the European Union.

Meanwhile, the European Ombudsman has also proposed that Article 5 of the preliminary draft Constitution for the European Union, which deals with citizenship, should stipulate that: "[E]very citizen of the Union has the right to refer to the [European Parliament-appointed] Ombudsman cases of maladministration in the activities of the Union's institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role." Such recognition would categorically copper-fasten at the constitutional level an existing and much-used right. ■

- **"European Ombudsman proposes changes to preliminary draft Constitutional Treaty", Press Release of 18 November 2002, EO/02/30, available at:**
http://www.euro-ombudsman.eu.int/release/en/2002-11-18.htm
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV
- **Speech by the European Ombudsman, Jacob Söderman – Round Table on the Future of Europe, 18 November 2002, available at:**
http://www.euro-ombudsman.eu.int/speeches/en/2002-11-18.htm
EN-ES-FR-IT-PT
- **Speech by the European Ombudsman, Jacob Söderman to the European Convention, 8 November 2002, available at:**
http://www.euro-ombudsman.eu.int/speeches/en/2002-11-08.htm
DE-EN-ES-FR
- **Preliminary Draft Constitutional Treaty, CONV 369/02, 28 October 2002, available at:**
http://european-convention.eu.int/bienvenue.asp?lang=EN&Content=
DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV

NATIONAL

BROADCASTING

AL – Map of Frequencies to Be Prepared

On 7 November 2002 the Albanian Parliament unanimously decided to suspend the ongoing licensing process for new private radio and television until March 2003. During this period a map of frequencies for radio and television broadcasting will be prepared, so no new licenses will be awarded, nor will the expansions of broadcasting zones by currently operating radio and television stations be authorized.

Hamdi Jupe

● Law No. 8969 of 7 November 2002, "For some measures in the field of radio and television broadcasting"

● "Memorandum of understanding" for the mapping of radio and television frequencies in Albania, signed by the *Keshilli Kombetar i Radio-televizioneve,* the OSCE Presence in Albania, DANIDA Albania, and IREX Albania of 24 July 2002

SQ

The decision follows new amendments to Law No. 8410 of 30 September 1998 "On Public and Private Radio and Television in the Republic of Albania" by Law No. 8969 of 7 November 2002, creating a legal framework for implementation of the "Memorandum of understanding" for the mapping of radio and television frequencies in Albania, signed by the *Keshilli Kombetar i Radio-televizioneve* (National Council of Radio and Television – KKRT, the state authority responsible for the licensing of private radio and television), the OSCE Presence in Albania, DANIDA Albania, and IREX Albania on 24 July 2002. The mapping of radio and television signals should provide the authorities with a first accurate view of the coverage of each station and shall lead to a national frequency plan within the next five months, as about 60 private televisions and 40 radios are broadcasting under licenses issued by the KKRT.

The aforementioned amendments have been introduced after a conflict between the owners of the private radio and television on the one hand and the KKRT on the other. As to Law No. 8655 of 31 July 2000 only two licenses for nationwide television broadcasting were to be awarded, further TV-stations – so-called "local television" – are allowed to cover only limited zones with their television signal. The map of frequencies shall produce definite findings on the technical possibilities for further nationwide broadcasting licenses in Albania ■

CZ – Digital Terrestrial TV in the Czech Republic

In December 2002 the Broadcasting Council extended the experimental licences of two entities launching the experimental operation of DVB-T in the Czech Republic, Czech Digital Group, a.s. (CDG) and *České Radiokomunikace, a.s.*

The two entities started broadcasting in 2000, and continued broadcasting in 2001, on the 46th and 25th channels, in the Prague region. The experiment was focussed particularly on the verification of the technical characteristics of the system (particularly various methods of encoding and counter-error security, resistance to reflections and requirements concerning a group of transmitters operating at the same frequency – the SFN network). In addition, the experiment included the transmission of data channels, including the Internet.

Several types of receivers were tested during the course of the experiment, with considerably different characteristics. CDG conducts experimental operation on television channel 46, using three transmitters with an effective radiated power of 10. 5 and 4 kW. The objectives of the experiment are as follows:

- Technical implementation of a single-frequency network (SFN)
- Technical testing, verification of characteristics and technical possibilities
- Preparation of network for future permanent operation (completion with back-up elements)
- Technical and commercial verification of the provided technical services

In 2000, the Broadcasting Council executed a document concerning the Concept of Transformation to Digital Broadcasting in the Czech Republic, at the request of the Chamber of Deputies of the Czech Parliament. This document was adopted by the Standing Committee for Communications during its 12th meeting held on 8 March 2001. According to Resolution No. 44, a licence for digital multiplex operators should be awarded by the Council after the Council reaches a final decision concerning the multiplex structure, stipulating the percentage rate of auxiliary services, defining the localities for statutory operators, specifying the location of existing nation-wide analogue broadcasters, deciding on the occupancy of vacant positions based on licence proceedings, announcing tender procedures and selecting an appropriate applicant for multiplex operation.

With respect to the document described above, the Ministry of Transport and Communications, in cooperation with the Ministry of Culture and the Council, executed another conceptual document, entitled the Concept of Transformation to Digital Audio and Video Broadcasting in the Czech Republic. This material completes the previous study, as discussed and approved by the Czech Government under Ref. No. 696/01 on 9 July 2001. This concept includes several important points:

- Obligation of the state administration to ensure adequate space within the frequency range
- Obligation of the state administration to ensure completion of the current media laws in order to ensure that licences may be awarded to digital multiplex operators and ensure the adequate participation of *Česká televize* (Czech TV) in digital broadcasting
- Government's duty to submit a draft amendment of Broadcasting Act No. 231/2001 Coll. and/or other acts
- Guarantee positions for nationwide broadcasters within the first two multiplexes
- Regulation must be carried out by two authorities, i.e. by the Council in the area of digital multiplexes and the Czech Telecommunications Office in the area of telecommunications services and services associated with the duty to ensure digital multiplex broadcasting and administration of the frequency range.

Pursuant to the aforementioned Government Decree, the Minister of Culture was ordered to draw up – in cooperation with the Minister of Transport and Communications – and submit to the Czech Government by 31 March 2002 a draft act amending Act No. 231/2001 Coll., concerning radio and television broadcasting and the amendment of other acts. The Minister of Culture set up a team for this task, later joined by the team for the concept of digital broadcasting (SDV) established by the Council. However, a new Cabinet has thrown out the original digital legislation in favour of a new law covering all communication platforms, which has prevented broadcasters from going ahead with their plans, as drawing up the new law is a protracted process. Legislation covering DTV in the Czech Republic therefore has suffered a setback, and will not be ready until the end of 2003. Two years ago Czech Digital Group and *České Radiokomunikace* began running tests to determine digital coverage. When the tests were completed, the groups were hoping to begin providing iTV services in order to recoup their capital expenditures. So they have already commented that their inability to begin broadcasting early 2003 will mean further losses. Both are continuing to prepare services, and both companies applied for a licence renewal, which now have been awarded. ■

Jan Fučík
Broadcasting Council, Praha

● Concept of Transformation to Digital Audio and Video Broadcasting in the Czech Republic

CS

DE – RTL and AOL Time Warner Take Over *n-tv*

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

On 12 November 2002, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - *KEK*), which is responsible for monitoring media concentration in Germany, provisionally approved the acquisition of shares in news broadcaster *n-tv* by *RTL Television GmbH (RTL)*, which is part of the *RTL Group*. The decision was given on the proviso that, if the *RTL Group* attains a dominant position, measures will be taken to guarantee diversity of opinion. *RTL* will acquire the stakes of *GWF Gesellschaft für Wirtschaftsfernsehen mbH & Co. KG* (47.33 %), *Verlag Norman Rentrop* (1.6 %) and *n-tv Nachrichtenfernsehen Beteiligungs GmbH & Co. Investitions KG* (0.26 %). *RTL* will therefore control 49.19 % of *n-tv*, while *CNN Germany Inc.* part of *AOL Time Warner* will hold 25.54 %, *Time Warner Entertainment Germany GmbH & Co. Medienvertrieb OHG* 24.27 %, *Karl-Ulrich Kuhlo* 0.75 % and the *DFA Deutsche Fernsehnachrichten Agentur* 0.25 %. *n-tv* will therefore be jointly controlled by *RTL* and *AOL Time Warner*.

The takeover of *n-tv* by *RTL* and *AOL Time Warner* had been cleared by the European Commission one week previously. It had been announced in accordance with Articles 4 and 3.1 (b) of the Merger Control Regulation (EEC Regulation No. 4064/89). Since *n-tv* was a very small player on the German free-TV market, the Commission judged that the take-over would only have a minor impact on *RTL's* market position and would not lead to the creation or strengthening of a dominant position. ■

● **Press release of the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK), available at: http://www.kek-online.de/cgi-bin/resi/i-presse/187.html**

DE

● **European Commission press release, available at: http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/02/1614|0|RAPID&lg=EN&display=**

DE-EN-FR

DE – Berlin and Brandenburg Public Broadcasting Authorities Merge

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

With the exchange of ratification documents between the current Mayor of the Berlin Land and the Minister-President of the Brandenburg Land, the merger of the two regional broadcasting authorities was officially completed on 29 November 2002. The broadcasting authorities, *Sender Freies Berlin (SFB)* and *Ostdeutscher Rundfunk Brandenburg (ORB)* have therefore amalgamated to form a single public service broadcaster known as *Rundfunk Berlin-Brandenburg (RBB)* (see IRIS 2002-7: 8).

The Inter-State Agreement, which needed the approval of the parliaments of both Länder, was given the green light by the Berlin Parliament on 31 October 2002, after the Brandenburg Parliament had approved it on 9 October 2002.

The Inter-State Agreement entered into force on 1 December 2002. The *RBB* Broadcasting Council, which had to be set up by the end of the year, was established on 18 December 2002. From a legal point of view, the new joint body will officially replace *ORB* and *SFB* by 1 June 2003 at the latest. ■

● ***Staatsvertrag über die Errichtung einer gemeinsamen Rundfunkanstalt der Länder Berlin und Brandenburg "Rundfunk Berlin-Brandenburg"* (Inter-State Agreement on the establishment of a joint broadcasting authority in Berlin and Brandenburg, *"Rundfunk Berlin-Brandenburg"*), Official Journal of the Brandenburg *Land* 2002, Part I, pp. 138 ff., 14 October 2002**

DE

DE – Public Service Broadcasters Define Their Remit

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a letter sent in mid-October 2002 to the President of the *Rundfunkkommission* (Broadcasting Commission) of the Länder and the Minister-President of Rheinland-Pfalz, the public service broadcasters - the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten in der Bundesrepublik Deutschland* (Union of German Public Service Broadcasters - *ARD*), *Zweite Deutsche Fernsehen (ZDF)* and *DeutschlandRadio (DLR)* - explained how they understood their public service remit.

The reason for the letter was an amendment to the *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting - *RStV*), adopted in principle by the Minister-Presidents at the end of October last year. The amendment redefined the remit of public service broadcasters and referred to their own definitions of their role. These developments are related to the Amsterdam Protocol on public service broadcasting in the Member States and the ongoing competition law debate concerning the financing of public service broadcasting. According to the current draft of the relevant *RStV* provision, "public service broadcasting should promote the free individual and public formation of opinion by producing and transmitting radio and television programmes and media services with predominantly programme-related content" (Art.1).

It is also intended that the Inter-State Agreement should mention the definitions of the public service remit drawn up by the broadcasters themselves. The broadcasters' plans should be published in the official journals of the Länder and the broadcasters should produce a report every two years in which they describe their achievements and the main focuses of their future activities. This would enable the Länder to verify that the broadcasters are actually fulfilling their remit. For this reason, the regulations contained in Inter-State Agreements should be examined.

Not surprisingly, the public service broadcasters' draft definition of their remit conflicts in some places with the ideas developed by the *Verband Privater Rundfunk und Telekommunikation* (Private Broadcasting and Telecommunications Association - *VPRT*) in a letter addressed, also in mid-October, to the Minister-Presidents. In addition to different emphases regarding programme content, the letter mentions the recognition of transparency standards relating to the broadcasters' commercial activities. It calls for the alleged expansion of public service broadcasting to be slowed down and urges public service broadcasters to reduce the number of new media services they offer and, once the current fee arrangements expire in 2004, to cease generating income through advertising and sponsorship.

At their annual conference at the end of the month, the Minister-Presidents decided to instigate preparations for a discussion and resolution on the subject by the heads of the State and Senate Chancelleries at their meeting in December. ■

FR – The *Conseil d'État* Delivers Statement on Qualification as a European Work Originally Made in the French Language

Amélie Blocman
Légipresse

● ***Conseil d'État*** **(10th and 9th sub-sections together), 15 November 2002 – SA Globe Trotter Network**

FR

On 12 December 2001, the *Conseil d'État*, required to deal with an urgent matter, decided to suspend the CSA's decision to refuse the qualification of the animated film *Le journal d'Anne Franck* as a European work originally made in the French language because of serious doubts concerning the legality of the measure (see IRIS 2002-2: 13). As the procedure for dealing with an urgent matter where suspension is involved requires that an application on the merits be entered, the *Conseil d'État* delivered a decision on 15 November in which it expressed its opinion that, on the contrary, the film's producer was not justified in calling for the CSA's decision to be cancelled.

On the refusal to qualify the film as a work originally made in the French language, the *Conseil d'État* recalled that the work, which merely adapts for the French public a film originally made in English and Japanese, had not been "produced principally in the French language in its original version", as required by Article 5 of the Decree of 17 January 1990. The *Conseil d'État* also stated that the fact that the film had received an operating and export licence that mentioned the French origin of the work did not give any entitlement to the qualification hoped for. Nor did the fact that other animated films had been qualified as works originally made in the French language even though their dialogues had been recorded in English.

On the refusal to qualify the film as a European work, the *Conseil d'État* recalled the definition contained in Article 6 of the Decree of 17 January 1990, according to which European works are those works: firstly, where production is carried out by a European company or financing is provided by European capital; and secondly, that make use of European performers and technicians for their production. Thus "the participation of writers, performers and technicians taking part in the creation and providing technical services" may not be less than a proportion determined in a decision of the Minister for Culture and Communication. The applicant producer pleaded the illegal nature of the decision of 21 May 1992, according to which a European work is a work that is "produced essentially" by European writers, performers and technicians using European technical resources. In order to appreciate their relative importance, the decision sets out scales that allocate points to these various contributions and lays down thresholds in terms of numbers of points, which vary according to the type of work. The *Conseil d'État* found that in establishing these scales the Minister for Culture had not exceeded the authority vested in him by Article 6 of the 1990 Decree, and that by allocating between one and four points to the various contributions to production to be taken into account and by requiring a participation of European factors set at fourteen points for an animated film to qualify as a European work, the Minister had not committed any error of appreciation either. The claim that the decision was illegal was therefore rejected. The *Conseil d'État* also stated that the film in question was merely an adaptation of a pre-existing work; the applicant company could not claim that it had supervised and actually controlled its production "by taking personally or sharing jointly in the initiative and financial, technical and artistic responsibility for the production", as required by Article 6 of the 1990 Decree. In consequence, and since the applicant had re-used the images of a pre-existing Japanese work, involving no more than FRF 13 million out of a total budget of approximately FRF 60 million, the CSA had applied the aforementioned texts properly by refusing to qualify the applicant as its producer, on the grounds that the applicant could not claim to meet the conditions of the definition of a producer given in Article L. 132-23 of the intellectual property code. As the conditions set out in Article 6 of the Decree of 17 January 1990 were not met in the present case, *Le journal d'Anne Franck* could not be qualified as a European work by the CSA. ■

FR –Submission of Kriegel Report on Television Violence and the Reaction of the Ministry of Culture

Last summer, when he was being questioned the day after the murder of a teenager that was supposedly inspired by an American horror film, the Minister for Culture and Communication, Jean-Jacques Aillagon, entrusted the philosopher Blandine Kriegel with a mission on "the impact of television violence on the public and on young people". Her report was submitted formally to the Minister on 14 November. The report proposes in particular a reinforcement of the absolute nature of the ban on broadcasting violent images between 6.30 am and 10 pm and the separation of subscription to pornographic shows or channels from the other packages on offer.

The report also advocates reorganising the *Commission de classification des films* (film classification board) to extend its role to cover all supports (DVD, video cassettes, video games, etc). The Minister has not taken up this proposal, as he feels it should remain exclusive to the cinema. He did however indicate that its composition should be reviewed and that the government would soon be making proposals to improve both its structure and the rules governing certain decisions, such as the ban on showing certain films to anyone under the age of 18. Thus he promised "better coordination" with the Minister for Family Matters, Christian Jacob. These proposals will not however produce any radical change in the board, as the Minister said that he was keen to maintain its present form.

On 12 December 2002, the National Assembly was to debate amendments that would make operating licences for films subject to dual supervision by the Ministry of Culture and Communication, as is the case at present, and the Ministry for Family Matters. Mr Aillagon also announced that he would soon be tabling a bill that would reinforce the CSA's powers of sanction in respect of violent programmes on television.

Lastly, as invited by the Kriegel report, Mr Aillagon will be approaching the Minister of Justice with a view

Mathilde de Rocquigny
Légipresse

to altering Article L. 227-24 of the Criminal Code that condemns "any activity involving carrying, producing or broadcasting a message of a violent or pornographic nature (...) where such message is likely to be seen or perceived by a minor" in order to make its application more effective. Lastly, the Minister took up the proposal made in the Kriegel report to set up a committee to "evaluate the shift towards more violence on television and respect for the regulation, which would have its place within the CSA".

At the same time, since the CSA stated that it was prepared to discuss with television channels the possibility of setting up a system that would block the broadcasting of pornographic films to minors; editors are coming up with a number of proposals. The CSA has therefore announced that it is currently having an expert report carried out on double encryption and other means of access control that the services are considering setting up in the coming weeks or months. ■

● **Violence on television, report by Ms Blandine Kriegel to Mr Jean Jacques Aillagon, Minister for Culture and Communication, available at:**
http://www.culture.gouv.fr/culture/actualites/communiq/aillagon/rapportBK.pdf

FR

GB – Oftel's New Conditional Access Guidelines and Rejection of Complaint about Charges on Public Service Broadcaster

Tony Prosser
School of Law
The University of Bristol

The Office of Telecommunications, Oftel, the UK's telecommunications regulator, is responsible for regulating conditional access services, including the terms on which public service broadcasters are given access to satellite platform providers (they do not apply to the digital cable platform, where "must carry" rules require free carriage). It has published a revised set of guidelines on conditional access pricing, setting out how it expects conditional access prices to be set and how operators should approach the negotiation process to agree those charges. They require that access should be granted on a fair, reasonable and non-discriminatory basis; fairness and reasonableness will be determined by what would be expected in a competitive market. Prices should thus fall between incremental and "stand-alone" costs. To avoid discrimination, comparable prices should be offered to comparable users, for comparable services, at comparable times, although differential pricing will be permitted where this does not adversely affect competition.

The Office also decided that the charges levied on ITV, the main private public service channel, by Sky Subscriber Services Limited, a subsidiary of British Sky Broadcasting, were fair, reasonable and non-discriminatory. It had received a complaint that the charges were too high and constituted anti-competitive price discrimination between ITV and other public service broadcasters. The Office conducted sensitivity analyses on the effect of disallowing various costs elements which supported the conclusion that charges were "fair and reasonable"; it also found that there were legitimate reasons for differences in price from those charged to other public service broadcasters.

The current position may be subject to change under the Communications Bill currently before Parliament. The Government expressed an intention to extend the "must carry" rules, but the Bill introduced in Parliament instead simply obliges public service broadcasters to offer their channels to satellite platforms. Charges will continue to be subject to the requirements outlined above. ■

● **"Terms of supply of conditional access: Oftel guidelines", Office of Telecommunications, 22 October 2002, available at:**
http://www.oftel.gov.uk/publications/broadcasting/2002/cagu1002.htm

● **"Oftel publishes decision on ITV complaint", Press Release 61/02 of 22 October 2002, available at:**
http://www.oftel.gov.uk/press/releases/2002/pr61_02.htm

● **The Communications Bill (as introduced to Parliament), available at:**
http://www.publications.parliament.uk/pa/cm200203/cmbills/006/2003006.htm

HR – Government Proposed new Law on Croatian RadioTelevision

Krešimir Macan
Croatian Radiotelevision HRT

On 5 December 2002 the Croatian Government proposed a Draft Law on *Hrvatska Radiotelevizija* (HRT – Croatian RadioTelevision) and introduced the legislative procedure by forwarding it to the Croatian Parliament.

The draft Law determines that HRT should form one integral public institution instead of two as envisaged by the current Law, but shall be split into three organizational units: Television, Radio and Music Production. The governing bodies of the HRT shall be: HRT Council, HRT General Manager and HRT Management Board. The HRT Council will be composed of 11 persons, selected on the basis of a public advertisement of the position and approved by the Parliament for a four-year term. Half of the Council will rotate every two years. Persons holding a political position (including Parliamentary deputies) will not be allowed to be members. The HRT Council will have the competence to elect the General Manager, also based upon public advertisement, for a four-year term, and to pass the HRT Statute. After that, the main task of the HRT Council will be the supervision of the implementation of guidelines for programming. The General Manager will propose his/her candidates for the directors of organizational units to the HRT Council. The HRT Management Board, which is the body responsible for the day-to-day management, will be composed of the General Manager, the directors of organisational units and one representative of the HRT employees. The organizational units' Directors of Radio and Television shall propose their candidates for the posts of Program Directors and Editor-in-chief of news and current affairs to the HRT Council, chosen upon a public advertisement and based on prior consent of the HRT journalists.

The Law is expected to be passed by the Croatian Parliament in early February 2003. ■

● **Draft Law on the Croatian Radiotelevision of 5 December 2002, edited by the Ministry of Culture**

HR

HR – Third Frequency of National TV to Be Privatised by October 2003

Krešimir Macan
Croatian Radiotelevision HRT

On 9 December 2002, the *Vijeće za radio i televiziju* (Council for Radio and Television) called for a public tender to allocate the third frequency currently used by *Hrvatska radiotelevizija* (Croatian RadioTelevision – HRT) to a private broadcaster (see IRIS 2002–10: 9). The tender will be published in the Official Gazette and potential concessionaires should file for tender documentation within 60 days of that date. The deadline for applications is 20 May 2003. The offers will be examined after 10 June 2003 and the new concessionaire shall be appointed by 1 October 2003. Thus, the deadlines for the award set by the current Law on Croatian RadioTelevision (March 2002) have not been met. ■

● ***Raspisan natječaj za treću mrežu HRT-a* (The public tender for the 3rd network called for), 9 December 2002 *HINA* (Croatian News Agency) http://www.hina.hr**

HR

HU – Regulatory Authority Takes Action Against "Big Brother"

Márk Lengyel
Legal Analyst

In a decision of autumn 2002 the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT, the independent regulatory authority for the media) stated that TV 2 – a national commercial television channel – violated the provisions of Act No 1 of 1996 on Radio and Television Services (Broadcasting Act) aimed at protecting minors by broadcasting a version of "Big Brother". Beyond this statement the ORTT has also imposed a HUF 6,900,000.- (approx. EUR 290,000.-) fine on the broadcaster.

Neither such kind of reality shows nor relevant ORTT's decisions in this regard have been a new phenomenon for the Hungarian broadcasters. The first program – entitled "the Bar" – had been broadcast by a local television channel (Viasat3) in the Budapest region in spring 2001. It was followed by the episodes of "the Base" on TV 2. Both programs had been the subject of decisions of the ORTT imposing sanctions on broadcasters because of infringements on human dignity.

This autumn both of the national commercial television channels decided to introduce the Big Brother-type reality show in its original format, showing the daily life of the volunteers isolated in a house. The episodes of the shows are broadcast at nearly the same time on the two television channels.

The latest decision of the ORTT on "Big Brother" is based on an analysis of a 10-day period of broadcasting. It states that the episodes of the program – broadcast regularly at 19.00 / 7 p.m. – contained sexually explicit scenes and dialogues. The analysis also shows that more than 200,000 minors had followed the reality show, which was promoted by the broadcaster as a program suitable for everyone. The broadcaster currently has appealed to the court against the ORTT's decision.

Following the decision the regulatory authority also held a public consultation involving the participation of the representatives of the broadcasters and other interested parties on the protection of human dignity and minors concerning Big Brother-type program format. ■

● **Decision No 1365/2002 (IX. 19.) of the ORTT**

HU

HU – President of the Regulatory Authority Resigns

Márk Lengyel
Legal Expert

On 2 December 2002 the president of the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT, the independent regulatory authority for the media) announced her resignation.

She was elected to the presidency by the previous Parliament – general elections had been held in April 2002 – in February 2000 for a four-year term of office.

According to her statement, financial pressure caused by the planned budgetary decisions in respect of the ORTT has reached a level which – beyond her control – fundamentally endangers the proper functioning of the regulatory authority.

According to the provisions of Act No I of 1996 on Radio and Television Services (Broadcasting Act) the ORTT's annual budget is determined by the Parliament year-by-year in a separate act. The draft act for the year 2003 – proposed by the responsible committee of the Parliament – would provide the ORTT for the next year with a budget of approx. EUR 3,512,000.- (HUF 831,552,000.-). This would mean a decrease of EUR 573,713.- (HUF 135,821,000.-) regarding the amount granted for 2002 and only provides just less than two-thirds of the necessary financial resources as indicated by the regulatory authority.

In a recent decision the parliamentary majority has also rejected the annual report of the ORTT on the activities it carried out in the year 2001.

According to the Broadcasting Act, the successor of the departing head of the regulatory authority shall be elected by the Parliament upon the joint nomination of the president of the Republic and the prime minister. ■

● **Bill on the Budget of the *Országos Rádió és Televízió Testület* for the year 2003 (T/1551)**

HU

HU – Tender on the Sales of Commercial Airtime and Sponsorship Possibilities Withdrawn

Gabriella Cseh
Attorney at Law, Budapest

On 24 October 2002, the Hungarian National Public Service Television (M1) announced a public tender aiming to outsource the sales of its entire available commercial airtime, including sponsorship possibilities, to a company on an exclusive basis (see No. 43 / 2002 of the Public Procurement Newsletter). The tender had been based on the Act XL of 1995 on Public Procurement.

The applicants had to fulfill financial, technical and professional requirements, among others, in order to have reliable bank credit records and they had to prove strong experience in the field of advertisement sales activities. Furthermore, the candidates had been asked to employ qualified sales personnel and operate a computer software system suitable for booking advertisement spots.

However, on 20 November 2002 the tender was withdrawn without giving further reasons. ■

● **Withdrawal of the tender published in No. 47 / 2002 of the Public Procurement Newsletter, published on 20 November 2002**

HU

NL – New Criteria for Allocation of Radio Frequencies in the Netherlands

Nico van Eijk
Institute for Information Law (IViR)
University of Amsterdam

For many years, frequencies for commercial radio (AM and FM) have been allocated on a temporary basis in the Netherlands. For almost a decade, discussions took place on the amount of available frequencies and on how to allocate them. About two years ago, consensus was reached and the decision was taken to use an auction to assign nine national licences for commercial FM radio (frequencies for regional/local commercial radio are also available, but are not further discussed here). This would mean a substantial increase in the number of stations. However, the Dutch Parliament changed its mind and forced the Government to reconsider the allocation plans so that a beauty contest should replace the auction. This was also written into the coalition agreement of the new right-wing/Christian democratic government that was inaugurated in August.

At first instance, the Rotterdam Court ordered that the auction process be continued, but after a change to the relevant regulation, the *Frequentiebesluit* (Frequency Decree), the Court confirmed the discretionary power of the government to choose the allocation mechanism, but also forced the government to speed up the process. In October, the government (although it also tendered its resignation) formally decided to continue with the beauty contest. The allocation process has to start in January 2003 and the new licences have to be granted by June 2003.

In the revised Decree, two new elements are introduced that directly concern freedom of expression. In the first place, the applicants will have to guarantee a "constant quality level". What this means is not yet clear and will need further discussion. Secondly, frequencies cannot be granted to, or held by, parties that will use the frequencies for disturbing the peace (*verstoren van de openbare orde*); for making trouble (*onrust stoken*) or for causing confrontation between (different) sections of the population (*bevolkingsgroepen tegen elkaar opzetten*). Compliance with this provision, for which there are already similar criteria in the Penal Code, will be supervised by the ministers with the relevant responsibilities. More than 20 years ago, all of the Dutch media regulation provisions which contained direct possibilities for political interference with broadcasting were abolished. The main arguments were that these provisions were outdated, not in line with freedom of expression and that there were already sufficient safeguards in the Penal Code. None of these arguments are discussed in the Explanatory Memorandum to the amendments of the Frequency Decree. The reasons for this fundamental change therefore remain unknown. ■

- ***Rechtbank Rotterdam dd.* 27 July 2002 (AE5810), available at: http://www.rechtspraak.nl/uitspraak/frameset.asp?ljn=AE5810**
- ***Rechtbank Rotterdam dd.* 11 October 2002 (AE8741), available at: http://www.rechtspraak.nl/uitspraak/frameset.asp?ljn=AE8741**
- ***Frequentiebesluit* (Frequency Decree): Stb. 1998, 638; amendments to the Decree (as discussed): Stb. 2002, 467**

NL

FILM

FR – Regulations on Authorisation of Cinema Season Tickets

Amélie Blocman
Légipresse

UGC's initiative taken in March 2000 without any prior reference to the public authorities to launch an "unlimited" season ticket resulted - in addition to the company being fined FRF 1.5 million for breach of the cinematographic industry code (see IRIS 2000-8: 9) - in the adoption of measures to set limits on commercial schemes of this type.

Since the acts of 15 May and 17 July 2001, setting up a scheme for cinema access giving entitlement to more than one entry ("unlimited cinema season tickets") is subject to the prior authorisation of the director of the *Centre national de la cinématographie* (national cinematographic centre – CNC), as is a cinema operator's membership of the scheme. A Decree was needed to lay down the method for issuing and withdrawing authorisations, and the obligatory clauses and the minimum duration of operators' commitments in respect of distributors, producers and beneficiaries. This has now been done, in the form of the Decree of 24 October 2002, Article 1 of which defines the concept of a "scheme of cinema access giving entitlement to a number of entries", which is understood as "any subscription giving access to a number of cinema viewings not defined in advance over a specific period of time and in specific establishments", which was not the case in Article 27 of the cinematographic industry code on the basis of the aforementioned legislation.

Article 5 of the Decree lists the documents that cinema operators must produce in support of their application to the director general of the CNC. These include a copy of the general conditions for the cinema access scheme giving entitlement to a number of entries offered to cinemagoers, a list of the cinema theatres accepting the scheme, letters of undertaking as to the applicant operator's reference price for seats for each of the distributors, the producers and the beneficiaries, documents giving details of the offer that is to be extended to operators, and contracts of association between the applicant and the operators. The aim of this is to enable the CNC to ensure that the scheme is fair and non-discriminatory, and that operators to whom membership is proposed receive a real guarantee by the applicant. On this point, Article 6 of the Decree requires undertakings on the reference price and rental rates to be subscribed for a minimum of two years.

If the conditions set out in Article 27(2) and (3) of the cinematographic industry code are met, authorisation is issued for a renewable four-year period; it may be valid either for all the operator's cinemas or for a certain number of them only. Any substantial modification made by an operator to an authorised scheme must be communicated to the CNC and would be subject to the issue of an amended authorisation issued for the amount of time the original authorisation still had to run. Lastly, an authorisation may be withdrawn if the conditions required for its issue are flouted. False declarations or refusal to allow an operator within the scheme's area of coverage to take part in the scheme set up are liable to incur the penalties provided for in Article 13 of the cinematographic industry code (fine of up to 20% of turnover, or closure of the operating company for up to one year). ■

- **Decree no. 2002-1285 of 24 October 2002 on application of the provisions of Article 27 of the cinematographic industry code and on schemes for cinema access giving entitlement to a number of entries, official gazette of 25 October 2002**

FR

NEW MEDIA/TECHNOLOGIES

RO – Government Proposes Harsh Penalties for Hackers

Mariana Stoican
Radio Rumänien International

In a Bill submitted to Parliament on 27 November 2002, the Government proposed harsh penalties for crimes involving the use of information technologies.

Persons, for example, who gain unauthorised access to the computerised transmission of data that is not meant for the public or who receive electromagnetic transmissions originating from a system designed for confidential information will be liable to prison sentences of one to seven years. The Bill also stipulates that persons who alter, erase or transfer data without permission, or who unlawfully obstruct the access of authorised persons to such data may be sentenced to between three and twelve years in prison.

Custodial sentences ranging from six months to five years may be imposed on people who illegally break into data systems, with heavier sentences applicable if special security precautions are bypassed.

If the operation of a data processing system is hampered by the insertion, transfer or removal of data or the blocking of access to stored data, the perpetrator may be sent to prison for between three and fifteen years.

Sentences ranging from six months to five years are proposed for the manufacture, sale, importation or marketing of technical devices and (decoding) software for the purposes of committing or aiding and abetting the aforementioned offences.

The Bill also provides for sanctions relating to child pornography on the Internet. For example, the production, transmission or possession of pornographic material portraying minors using computer technology is also to be punishable with prison sentences of between three and twelve years.

In order to support the work of the Supreme Court, an office to combat Internet-based crime is to be set up, with powers to confiscate immediately any data that could be the object of one of the aforementioned crimes. ■

● ***Proiect de lege pentru combaterea criminalităţii informatice*, available at: http://www.mcti.ro/mcti0.html?page=1130**

RO

RELATED FIELDS OF LAW

CH – Work Starts on New Federal Legislation to Promote Culture

Patrice Aubry
Lawyer (Geneva)

Switzerland's official promotion of culture is based on Article 69 of the new Federal Constitution that came into force on 1 January 2000. To implement this provision of the Constitution, federal legislation on the promotion of culture (LEC) now needs to be drawn up. A steering group chaired by the director of the Federal Office for Culture (OFC) has been instructed to draw up a preliminary draft for national legislation on culture and to state the financial requirements this new legislation would involve. On 20 September 2002, the OFC submitted the working document drawn up by the steering group to the appropriate quarters.

Firstly, the steering group made an effort to define the actual concept of "culture" and state the role of the public authorities in this field. The working document also describes the areas of competence and the duties of the Confederation in the promotion of culture.

The working document also defines the characteristics the future legislation should have. Thus the steering group noted that the function of this legislation would be to cover and regulate the whole system for the promotion of culture in Switzerland. It must also organise the promotion of culture in areas where there is no specific legislation, or for which legislation is currently in preparation. The LEC must also be compatible with legislation on the promotion of culture in specific fields, such as cinematographic production, the transfer of cultural goods, copyright and broadcasting. The new legislation should also regulate relations between the national system for promotion and the similar systems set up by the cantons and municipalities. Lastly, the LEC will lay down the principles governing the future development of the promotion of culture at national level.

Lastly, the working document states the objectives that the law must set out in terms of national policy concerning the promotion of culture. In particular, it will be for the Confederation to preserve the nation's cultural heritage, to support the diversity and quality of what is offered in terms of culture, and to create overall conditions favourable to the creation of culture and the financing of culture by the private sector. The Confederation must also guarantee freedom of the arts, promote intercultural understanding, and support cultural organisations, projects and events of national importance. Lastly, the Confederation must encourage the spread of culture and cultural exchanges both within and beyond national borders. ■

● **Working document by the Constitution 69 steering group, dated 30 August 2002. Available on the Internet site of the Federal Office for Culture at www.kultur-schweiz.admin.ch**

FR-DE

DE – Copyright Law Aligned With WIPO Treaties

In Spring 2002, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty entered into force. Germany had signed both treaties on 20 December 1996, at the conclusion of a Diplomatic Conference on copyright and related rights held in Geneva.

Under German law, ratification of these treaties depends not only on a new *Vertragsgesetz* (Treaty Act) being introduced in accordance with Article 59.2 of the *Grundgesetz* (Basic Law) - the *Gesetz über die Zustimmung des Deutschen Bundestages zum WIPO-Vertrag* (Act on the Approval by the German *Bundestag* of the WIPO Treaty) - but also on German copyright law being aligned with the provisions of the WIPO treaties. A Federal Government Bill of 6 November 2002 contains the necessary changes to the *Urhebergesetz* (Copyright Act). The Bill also serves to transpose into German law Directive

2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, which had to be transposed into domestic law by 22 December 2002. For the time being, however, only the binding provisions of the Directive that were subject to the deadline and those of both WIPO treaties are to be transposed. In March 2002, the Federal Government had submitted an initial draft, which was subsequently introduced into the legislative process. However, the *Bundesrat* (upper house of parliament) expressed serious reservations about these proposals at the end of September 2002 and called for them to be thoroughly reviewed.

Under the provisions of the new Bill, authors and artists will have exclusive rights over the publication, dissemination and exploitation of their works via online, on-demand services, for example. Furthermore, in contrast to existing regulations, the admissibility of digital private copying will be clarified. The Bill also aims to guarantee "effective technical protection measures" to prevent its provisions being circumvented. Finally, the legal position of performers is to be brought closer to that of authors through the broadening of their personality rights. ■

Caroline Hilger
Institute of European Media Law (EMR), Saarbrücken / Brussels

● ***Draft Vertragsgesetz*** **(Treaty Act), 25 October 2002, available at: http://dip.bundestag.de/btd/15/000/1500015.pdf**

● **Draft Act regulating copyright in the information society, 6 November 2002, available at: http://dip.bundestag.de/btd/15/000/1500038.pdf**

DE

DE – Constitutional Court Ruling on Property Owners' Obligation Under Telecommunications Law

In a decision announced on 26 August 2002, the *Bundesverfassungsgericht* (Federal Constitutional Court - *BVerfG*) upheld a decision of the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) regarding the obligation set out in Article 57.1.1 of the *Telekommunikationsgesetz* (Telecommunications Act - *TKG*). According to that provision, the owner of a property cannot prohibit the setting up of telecommunications lines if a line or installation which is secured by a right already exists and if the property is not affected or is only insignificantly affected by such use. According to the *TKG*, "telecommunications lines" are cable systems which encompass not only the cables themselves, but also additional installations such as cable duct conduits and cable chambers. The appeal to the Constitutional Court concerned a dispute in which the plaintiff had sought an injunction to prevent the defendant from installing, and require it to remove, several cable chambers which were meant to be used for telecommunications purposes. The defendant was an energy supplier which, on the basis of a restricted easement agreement (which concerns the use of a property by a person authorised to use it for a particular purpose), was authorised to set up and operate a natural gas pipe.

In its decision, the *BGH* had ruled in the defendant's favour, stating that the property owner could not prohibit the setting up of telecommunications installations using existing facilities originally intended for another purpose. Neither could he prevent new telecommunications lines from being installed on property that was subject to a restricted easement. The appeal to the Constitutional Court disputed this ruling and the *BGH's* interpretation of Article 57.1.1 of the *TKG*.

Having examined the facts of the case, the *BVerfG* ruled that Article 57.1.1 of the *TKG*, which laid down the conditions for the obligation on property owners, conformed fully with the Constitution. Furthermore, the *BGH's* interpretation of the obligation had not infringed the Constitution. This obligation on property owners formed part of their duty to act in the interests of the common good where use of their property was concerned, in accordance with Article 14.1 of the *Grundgesetz* (Basic Law - *GG*). The Basic Law itself pointed out that the telecommunications sector was important for the national economy, particularly in providing the infrastructure on which media dissemination depended. The legislature needed to take this into account when revising telecommunications regulations. In weighing up the conflicting interests, the Constitutional Court concluded that the legislature had, through Article 57.1.1 of the *TKG*, only imposed a slightly greater obligation on property owners, which was also justified under the Constitution. ■

Caroline Hilger
Institute of European Media Law (EMR), Saarbrücken / Brussels

● **Decision of the *Bundesverfassungsgericht* (Federal Constitutional Court), 26 August 2002, case no. 1 BvR 142/02, available at: http://www.bverfg.de**

DE

DE – *Telekom* Grants Exclusive Marketing Rights to Level 4 Operators

Press releases issued at the end of September by various level 4 network operators reported that *Kabel Deutschland GmbH (KDG)*, a 100% subsidiary of *Deutsche Telekom AG*, had agreed to grant network operators exclusive marketing rights covering digital television. As part of the anticipated co-operation between *KDG* and the members of the union of private cable network operators (*ANGA*) and *Deutsche Netzmarketing (DNMG)*, direct contact with customers shall in future only be made by the level 4 operators, unless the latter expressly agree to allow *KDG* to carry out such marketing. ■

Caroline Hilger
Institute of European Media Law (EMR), Saarbrücken / Brussels

● **See (as an example of similar press releases by other level 4 network operators) press release by Telecolumbus, 25 September 2002, available at: http://www.telecolumbus.de/nachrichten/nachrichten.php?id=262**

DE

IE – New Commission for Communications Regulation

The Communications Regulation Act, 2002 (see IRIS 2002-6: 14), provided for the establishment of a three-person commission to replace the Office of the Director of Telecommunications Regulation (ODTR). A Ministerial Order was issued to enable the new commission to be established on 1 December 2002, the fourth anniversary of the liberalisation of the telecommunications market.

The Commission is to be known as ComReg, the Commission for Communications Regulation.

Section 11 of the Act states that "[S]ubject to this Act, the Commission shall be independent in the exercise of its functions." However, section 13 (1) states that: "[I]n the interests of the proper and effective regulation of the electronic communications and postal markets, the management of the radio frequency spectrum in the State and the formulation of policy applicable to such proper and effective regulation and management, the Minister may give such policy directions to the Commission as he or she considers appropriate to be followed by the Commission in the exercise of its functions. The Commission shall comply with any such direction."

The first such policy direction was issued in draft form by the Minister for Communications, Marine and Natural Resources on 2 December 2002. Key objectives include placing Ireland on a competitive par with the top OECD economies, creating an innovative legislative framework and flexible legal environment, and ensuring competitively-priced, high-quality postal services. Among the main priorities in the short- to medium-term are flat-rate Internet access and broadband rollout. Before imposing regulatory obligations, the Commission is directed to examine whether the objectives could be better achieved by forbearance, and reliance instead on market forces. It is also to ensure regulatory consistency with other Member States and across platforms, and to minimise costs, both the costs of regulation and retail prices. ■

Marie McGonagle
Faculty of Law
National University
of Ireland, Galway

- **Statutory Instrument No. 510 of 2002 Communications Regulation Act 2002 (Establishment Day) Order 2002, 8 November 2002, Minister for Communications, Marine and Natural Resources, available at: http://www.odtr.ie/docs/si510of2002.doc**
- **The Communications Regulation Act, 2002, available at: http://www.odtr.ie/docs/communications_regulation_act_2002.pdf**
- **"Dermot Ahern Launches Draft Policy Direction to ComReg", Department of Communications, Marine and Natural Resources Press Release of 2 December 2002, available (on the Department's website) at: http://www.dcmnr.ie/**

IE – New Advisory Group on Defamation

Defamation law in Ireland is based on the Defamation Act, 1961 and proposals for updating it were made by the Law Reform Commission in 1991. Since then, reform of defamation law has been on the programme of successive governments. At the end of 2001 the Government agreed the outline of a new Bill. A general election held in May 2002 returned the same parties to government, and their legislative programme lists the new Defamation Bill at No. 36 and states that an outline has been agreed and that the text of the Bill is currently being drafted. The new Minister for Justice, Equality and Law Reform has now appointed an advisory group on defamation to work in parallel to the drafting process to help bring about a "modern responsive code covering defamation". The group is to report by the end of 2002 and its report will have an input into the new Bill, which will be important for all the media and which is to be published in mid-2003. The group is to "review relevant domestic and international material with a view to suggesting such changes or additions to the present Scheme as may be consistent with best practice in other jurisdictions and which will result in a more efficient defamation regime in this country". In particular, it is to examine the scope which should attach to the defence of qualified privilege, particularly where comment on matters of public interest is concerned. It is also to consider the respective roles which should be assigned to judge and jury in High Court actions, and the operation of the presumption of falsity, which currently puts the burden of proving truth on the defendant.

Along with issues of defamation, the group has also been asked to consider the nature and extent of any statutory intervention which might attach to the establishment of a regulatory body for the press and to make proposals in that regard. The national and regional press, and the National Union of Journalists, are opposed to a statutory complaints' body but have long favoured the introduction of a self-regulatory complaints body once the defamation laws have been reformed. A statutory body already exists in the case of the broadcast media. The Broadcasting Complaints' Commission was established in January 1977 under the Broadcasting Authority (Amendment) Act, 1976 and its remit has since been extended by the Radio and Television Act, 1988 and the Broadcasting Act, 2001 (see IRIS 2001-4: 9). ■

Marie McGonagle
Faculty of Law
National University
of Ireland, Galway

- **"Minister McDowell announces the establishment of a Legal Advisory Group on Defamation", Press Release (which includes the Terms of Reference of the Group) of the Department of Justice, Equality and Law Reform of 9 October 2002, available at: http://www.justice.ie/802569B20047F907/vWeb/pcCAMC5ERDXZ**

LU – Legislation to Protect the Individual in the Processing of Personal Data Comes into Force

The Act of 2 August 2002 on the protection of the individual in the processing of personal data came into force on 1 December 2002. This legislation transposes Directive 95/46/EEC into national legislation and repeals the Act of 31 March 1979 regulating the use of personal data in computer processing, which has been largely ignored.

In accordance with the guidelines set out in the Directive, the new Act makes every effort to ensure the quality of the data collected (Article 4), the legitimacy of the purpose of the processing (Article 5) and the protection of the processed data (Article 22). It aims to ensure that individuals have a right of access to data about themselves (Article 28) and sets up an appeal procedure (Article 30). The Act completes the provisions set out in the Directive, more particularly as regards surveillance measures set up in the workplace. Thus surveillance of workers in order to determine their remuneration is only allowed on a temporary basis and not until the employer has informed the joint works committee.

Marc Thewes
Barrister
Lecturer at the Luxembourg University Centre

According to Article 12 of the Act, personal data may only be processed after notification has been given to the *Commission nationale pour la protection des données* (national data protection board) instituted by the Act, whose members were appointed in October 2002 for a six-year term of office. Certain types of data processing, considered "sensitive", are even subject to obtaining prior authorisation.

In accordance with the provisions of the Act, the board has adopted internal regulations and is currently drawing up a form to make it easier for people subject to the legislation to notify processing. The adoption of this scheme, on which effective application of the obligation of notification depends, is currently expected in early 2003. According to the terms of the Act, this must take place within no more than four months of the members of the board being appointed.

Article 33 of the Act enables the board to impose administrative sanctions on anyone responsible for data processing that infringes the Act. It may "prohibit processing temporarily or permanently" or "block, delete or destroy data used in wrongful processing". Appeals may be brought against these penalties before the administrative courts.

Interim provisions include the requirement that existing processing must be brought into line with the Act within two years of its coming into force. ■

● Act of 2 August 2002 on protection of the individual in the processing of personal data, available at: http://www.etat.lu/legilux/DOCUMENTS_PDF/MEMORIAL/memorial/a/2002/a0911308.pdf

● Guy Arendt, La loi sur la protection des données nominatives, Laurent Bulletin no. 2/1990, pp. 1-44

FR

PUBLICATIONS

Dony, Marianne; Bribosia, Emmanuelle (Ed.).-*L'avenir du système juridictionnel de l'Union européenne*.- Bruxelles : Editions de l'Université libre de Bruxelles.- 2002, 289 p.- (*Etudes européennes*).- ISBN 2-8004-1297-6.-EUR 30

González, Alexander.- *Der digitale Film im Urheberrecht: urheberrechtliche Aspekte der Computeranimation und der digitalen Filmnachbearbeitung*.-Baden-Baden: Nomos, 2002.- 266 S.- (*Schriftenreihe des Archivs für Urheber- und Medienrecht*, Bd. 202).- ISBN 3-7890-8140-X.-EUR 46

Hamann; Weider (Hrsg.).-*E-Commerce und Recht: ein Leitfaden für Unternehmen*.- Berlin: Erich Schmidt Verlag, 2002.- 304 S.- (*Electronic Commerce und Recht*, Bd. 2).- ISBN 3-503-06069-3.-EUR 39.80

Hoeren; Müglich; Nielen (Hrsg.).- *Online-Auktionen : eine Einführung in die wichtigsten rechtlichen Aspekte*.- Berlin: Erich Schmidt Verlag, 2002.-388 S.- (*Electronic Commerce und Recht*, Bd. 3).- ISBN 3-503-06098-7

Jooris, Eric.- *Droit d'auteur, droits voisins & droits connexes: droit belge, européen et international*.- Louvain-la-Neuve: Larcier, 2002.-274 p.- (*Codes Larcier thématiques*).- EUR 124

Söderman, Jacob.- *What can the European Ombudsman do for you*?, available on the Ombudsman's website at: http://www.euro-ombudsman.eu.int/guide/en/default.htm
Hard copies of the Guide can be obtained by contacting Rosita Agnew, Press Officer; tel : +33 3 88 17 24 08;
E-mail: ragnew@europarl.eu.int

Stadler, Thomas.-*Haftung für Informationen im Internet*.- Berlin: Erich Schmidt Verlag, 2002.-256 S.- (*Electronic Commerce und Recht*, Bd. 5).- ISBN 3-503-06647-0.-EUR 39.80

Steinmaurer, Thomas.- *Konzentriert und verflochten: Österreichs Mediensystem im Überblick*.- Innsbruck: Studien Verlag, 2002.- 133 S.-(*Beiträge zur Medien- und Kommunikationsgesellschaft*, Bd.10).- ISBN 3-7063-1755-8.- EUR 13.50

AGENDA

European Film Finance Summit
5 February 2003
Organiser: Screen International
Venue: Berlin
Information & Registration:
Tel.: +44 (0)20 7505 8564
Fax: +44 (0)20 7505 8566
E-mail: conferences@emap.com