

INTERNATIONAL

UNITED NATIONS / INTERNATIONAL TELECOMMUNICATION UNION

World Summit on the Information Society:
Draft Declaration of Principles
and Draft Action Plan _____ 2

COUNCIL OF EUROPE

European Court of Human Rights:
Case of Peck v. United Kingdom _____ 3

EUROPEAN UNION

European Commission:
Investigation Regarding
the Acquisition of Football Rights
by Audiovisual Sport Closed _____ 3

European Commission:
First Report on the Implementation
of the Conditional Access Directive Adopted _____ 4

European Commission:
EU Tables its Offer in WTO
Services Negotiations _____ 5

European Commission:
Proposal to Extend the MEDIA Programme
and the Culture 2000 Programme up to 2006 _____ 5

NATIONAL

BROADCASTING

AT–Austria:
Public Consultation on DAB-T and DVB-T _____ 6

Commercial Broadcasting Study _____ 6

Bill on Creation of Digitisation
and TV Film Support Funds _____ 7

BA–Bosnia and Herzegovina:
Editorial Principles of the Public
Broadcasting Service _____ 7

BE–Belgium/Flemish Community:
First Decision of Council for Journalism –
No Infringement of Journalistic Ethics
by Commercial Television _____ 7

BG–Bulgaria:
Council of Electronic Media Bans Advertising
in Sponsorship Spots _____ 7

CH–Switzerland:
End of Dispute between Cablecom and Teleclub _____ 8

DE–Germany:
End to Dispute Over Transmission
of “Saving Private Ryan” _____ 8

No Guaranteed Right to Cancel
Pay-TV Subscription _____ 8

FR–France:
The Government Adds to the Preliminary
Bill on Electronic Communications _____ 9

Mission on the
“Television without Frontiers” Directive _____ 9

IT–Italy:
New Contract of Service for
the Public Service Broadcaster RAI _____ 9

MD–Moldova: Broadcasting Law Amended _____ 10

YU–Serbia and Montenegro:
Broadcasting Council Appointed _____ 10

FILM

DE–Germany:
Review of Media Decree on Taxation
of Film and TV Funds _____ 11

FR–France:
Minister for Culture Presents
his Programme to Help the French Cinema _____ 11

NEW MEDIA/TECHNOLOGIES

NL–Netherlands:
Act on Electronic Signatures Adopted _____ 12

RELATED FIELDS OF LAW

CZ–Czech Republic:
Ban on Tobacco Advertising _____ 12

ES–Spain: New Telecommunications Bill _____ 12

IT–Italy: Major Changes in Italian Copyright Law _____ 13

LT–Lithuania:
Amendments of the Lithuanian Law
on Provision of Information to the Public _____ 13

PL–Poland:
Amendments to the Act on Telecommunications _____ 13

RU–Russian Federation:
Order to Hold MMDS Competitions _____ 14

US–United States: Summary Judgment
Granted for Peer-to-Peer File Sharing Programs _____ 14

Despite Recent Internal FCC Infighting
in the Telecoms Arena, Commission Plans
to Vote on Media Ownership Rules as Scheduled _____ 14

YU–Serbia and Montenegro:
Law on Information Adopted _____ 15

Telecommunications Law Adopted in Serbia _____ 15

PUBLICATIONS _____ 16

AGENDA _____ 16



INTERNATIONAL

UNITED NATIONS / INTERNATIONAL TELECOMMUNICATION UNION

World Summit on the Information Society: Draft Declaration of Principles and Draft Action Plan

The second meeting of the Preparatory Committee for the World Summit on the Information Society (WSIS) was held in Geneva from 17 to 28 February 2003 (see IRIS 2003-3: 4). The results of this meeting consist of a draft Declaration of Principles and a draft Action Plan.

The WSIS is an initiative of the International Telecommunication Union (ITU) and the United Nations, the first having a leading organisational role (see IRIS 2002-2: 3). It will take place in two phases, the first to be held from 10 to 12 December 2003 in Geneva, the second from 16 to 18 November 2005 in Tunis. The Summit will aim at bridging the digital divide by promoting development through

Saskia Hoes
Institute for
Information Law (IViR)
University of Amsterdam

• **Draft Declaration of Principles and Draft Action Plan of the World Summit on the Information Society, available at:**

http://www.itu.int/wsis/documents/listing.asp?lang=en&c_event=pci11&c_type=td

EN-ES-FR

• **"World Summit on the Information Society - An information society for all and an opportunity for all to comment", Press release of the International Telecommunication Union of 25 March 2003, available at:**

http://www.itu.int/newsroom/press_releases/2003/NP03.html

EN-ES-FR

access to information, knowledge and communication technologies. Intergovernmental bodies, NGOs, civil society and the private sector, among others, will be involved in both phases of the Summit and in the preparatory process.

The draft documents, with which last February's meeting was concluded, include a declaration of commitment to build a new kind of society, the Information Society. This society should be inclusive. In it, all persons, without distinction of any kind, should be empowered to freely create, receive, share and utilize information and knowledge, in any media and regardless of frontiers. It must attend to the interests of all nations, especially the interests of developing and least-developed countries. Thus, it is hoped that the Information Society will reduce the gap between these countries and developed countries and that it will eliminate the existing socio-economic differences between societies. The proposed standard will be met by, for instance, building information and communication infrastructures and by educating people, in particular young people, as they are the future workforce.

The draft declaration also lays down the essential requirements for the development of an equitable Information Society, including respect for all internationally recognized human rights and fundamental freedoms, such as freedom of opinion and expression, and the existence of independent, pluralistic and free communication media.

In order to help implement the principles set out in the declaration, the Preparatory Committee has also drawn up a draft action plan. This plan is designed as a flexible action plan that is to be used as a reference framework and as a source of guidance for the different countries in the world.

The results of the second meeting of the Preparatory Committee for the WSIS have been made available on the Internet. These documents are open to comment. Comments received before 31 May 2003 will be included in a reference document. The intention is to submit the drafts to Heads of States for their approval at the Summit in December ■

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

• **Publisher:**

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, The 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) - Brigitte Auel - Véronique Campillo - Paul Green - Isabelle Herold-Vieuxblé - Bernard Ludwig - Marco Polo Sàrl - Katherine Parsons - Stefan Pooth - Erwin Rohwer

• **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) -

Francisco Javier Cabrera Blázquez, Liza Dignac & 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) - Sabina Gorini, 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

© 2003, European Audiovisual Observatory, Strasbourg (France)



MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



COUNCIL OF EUROPE

European Court of Human Rights: Case of Peck v. United Kingdom

In the case of *Peck v. United Kingdom* the applicant complained about the disclosure to the media of closed circuit television (CCTV) footage, which resulted in images of him being published and broadcast widely. The local authority operating the CCTV system, the Brentwood Borough Council, had released the images to the media with the aim of promoting the effectiveness of the system in the detection and the prevention of crime. Extracts of the footage, *inter alia*, were included in an Anglia Television news programme and in the BBC programme "Crime Beat". The masking was considered inadequate by the Independent Television Commission (ITC) and the Broadcasting Standards Commission (BSC) as neighbours, colleagues, friends and family who saw the programmes recognised the applicant. The judicial authorities in the United Kingdom, on the other hand, did not consider that the disclosure of the CCTV material was a breach of the applicant's right to privacy under Article 8 of the European Convention.

The European Court of Human Rights, however, is of the opinion that the disclosure of the images to the media resulted in a breach of Article 8 of the Convention. The Court emphasises that the applicant was in a public street but that he was not there for the purposes of participating in any public event, nor was he a public figure. The image of the applicant was shown in the media, including the audio-visual media, which are commonly acknowledged as having "often a much more immediate

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

● Judgment by the European Court of Human Rights (Fourth Section), case of *Peck v. United Kingdom*, Application no. 44647/98 of 28 January 2003, available at: <http://www.echr.coe.int>

EN

EUROPEAN UNION

European Commission: Investigation Regarding the Acquisition of Football Rights by Audiovisual Sport Closed

The European Commission has put an end to its investigation into the Spanish market for the acquisition of football rights.

The origin of this investigation dates back to 1996. At that time, *Telefonica* (the main Spanish telecom operator, also active in the Spanish audio-visual market) and *Sogecable* (the leading Spanish pay-TV operator, jointly controlled by the Spanish media group *PRISA* and *Canal Plus France*) competed to acquire exclusive rights for the broadcasting on television of different football competitions. In 1997 however, they created, together with the Catalan public broadcaster *TV3*, a joint venture (Audiovisual Sport) for the joint exploitation of their broadcasting rights to the Spanish football league matches for the 1998/1999 to 2002/2003 seasons.

In June 1999, the parties reached a new agreement (Audiovisual Sport II) by means of which they assigned to Audiovisual Sport any new contracts concluded with Spanish football clubs (relating to national or European competitions) for the 2003/2004 to 2008/2009 seasons.

and powerful effect than the print media". As a result, the Court considers that the unforeseen disclosure by the Council operating the CCTV system of the relevant footage constituted a serious interference with the applicant's right to respect for his private life. The Court also comes to the conclusion that the disclosure was not "necessary in a democratic society". Although the Court recognises that the CCTV system plays an important role in detecting and preventing crime and that this role is rendered more effective and successful through advertising the CCTV system and its benefits, the Council had other options available to achieve these objectives. The Council could have taken steps to obtain the applicant's prior consent to disclosure, it could have itself masked the images before making them available to the media, or it could have taken the utmost care in ensuring that the media to which the disclosure was made masked the images. The Court notes that the Council did not explore the first or second options and considers that the steps taken in respect of the third option were inadequate. The Court is of the opinion that the Council should have demanded written undertakings from the media to mask the images, a requirement that would have emphasised the need to maintain confidentiality. As such, the disclosure constituted a disproportionate and therefore unjustified interference with the private life of the applicant and a violation of Article 8 of the Convention.

With regard to the applicant's complaint that he had no effective domestic remedy to have his right to privacy protected in the United Kingdom, it is interesting to underline that the European Court is of the opinion that the power of the BSC and the ITC is not sufficient to consider the procedures before these bodies as an effective remedy, as they cannot make monetary compensation available to an aggrieved individual who may have been injured by an infringement of the relevant broadcasting regulation. Neither did the Court accept the Government's argument that any acknowledgment of the need to have a remedy would undermine the important conflicting rights of the press as guaranteed by Article 10 of the Convention, as the media could have achieved their objectives by properly masking the applicant's identity. Accordingly there has also been a violation of Article 13 of the Convention (right to effective remedy before a national authority). ■

In addition, they agreed that these matches could only be broadcast on *Telefonica* and *Sogecable's* pay-TV platforms (*Vía Digital* and *Canal Satélite Digital*, respectively), which jointly controlled more than 90% of the Spanish pay-TV market.

The European Commission received various complaints from competitors in the pay-TV market and from Spanish football clubs. They argued that the agreement could cause serious anti-competitive effects in the market for the acquisition of rights to broadcasting of football events (through the creation of a joint buying system), and in the downstream markets for pay-TV and pay-per-view.

After a preliminary examination, in April 2000 the Commission announced its intention of lifting the immunity from fines that the parties benefited from thanks to having notified the agreement to the Commission in September 1999 (see IRIS 2000-6: 4). After the Commission's intervention, in June 2000, *Telefonica* and *Sogecable* granted access to the relevant football rights to new cable and DTTV entrants in Spain. In September 2000, the Commission said that it considered the market conditions sufficient to lead to a reduction in the cost of the rights, and it announced that it would not tolerate any tacit co-ordination in regard to prices by the Spanish broadcasters. In October 2000, prices for pay-per-view

football were cut by some Spanish pay-TV platforms. However, some matters (duration of the contracts, joint buying power of Audiovisual Sport vis-à-vis the football clubs) remained under the scrutiny of the European authorities (see IRIS 2001-1: 3).

The situation changed after *Telefonica* and *Sogecable* decided to merge their pay-TV platforms. The case was referred to the Spanish authorities by the European Commission at their request in August 2002, and the

Alberto Pérez Gómez
Entidad Pública
Empresarial RED.ES

● "Commission closes its probe of Audiovisual Sport after Sogecable/Via Digital merger",
Press Release of the European Commission IP/03/655 of 8 May 2003, available at:
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action=gettxt=gt&doc=IP/03/655101RAPID&lg=EN&display=
DE-EN-ES-FR-IT

European Commission: First Report on the Implementation of the Conditional Access Directive Adopted

"The knowledge-based economies of the 21st century are expected to rely progressively on pervasive electronic pay services" and "[I]n its current form the Directive already provides a substantial level of legal protection against the piracy of electronic pay services protected by conditional access". These are two (out of many) conclusions from the first report on the implementation of Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, and consisting of, conditional access (Conditional Access Directive – CAD, see IRIS 1998-10: 6). The report examines the implementation of the Directive by the Member States and the possible need for amendments in the light of technical and economic developments.

After a concise introduction to the key provisions of the Directive, the report concludes that the Directive is still not fully implemented into national legislation. Two Member States (Belgium and Spain) are still in the process of implementation, while there is some uncertainty in several others as to the completeness and compatibility of national implementations. The fact that the Directive is not yet implemented fully in all Member States is also the reason why, according to the Commission, it is still too early to assess the practical effects of the Directive on piracy. The Commission announced its intention to examine the national measures in question and to vigorously pursue its goal of achieving full implementation of the Directive. This is also true for the Candidate Countries that have to implement the Directive as part of the *acquis communautaire* at the latest by the date of accession in 2004.

Two questions that have been raised during the adoption of the Directive stood central also to this report: Is there a need to extend the CAD to cover the use of conditional access for reasons other than the remuneration of the service provider, notably the use of conditional access for copyright reasons? Also: Should the Directive address private acts of circumvention too? Regarding the first question, the report refers to a study that examined the legal and economic implications of the use of conditional access for reasons other than the protection of remuneration. According to this study, the use of conditional access for non-remuneration reasons is likely to

Natali Helberger
Institute for
Information Law (IViR)
University of Amsterdam

merger was finally approved on 29 November 2002 by the Spanish Council of Ministers, after imposing a list of 34 conditions upon the deal (see IRIS 2003-3: 10).

Some of these conditions relate to the acquisition of football rights. For example, they restrict the duration of the contracts that *Sogecable* may sign with the Spanish football clubs; they guarantee third parties' access to the rights under fair, reasonable and non-discriminatory conditions and they prohibit *Sogecable* from acquiring exclusive rights for transmission via UMTS or ADSL. *Sogecable* is also prohibited from reaching strategic agreements with *Telefonica's* subsidiaries or to benefit them when selling content, in order not to strengthen the dominant position of the latter in neighbouring electronic communications markets. In principle, the conditions imposed upon the parties shall apply for a period of five years.

Sogecable will also buy out the stake of *Telefonica* in Audiovisual Sport, therefore terminating the agreement notified to the European Commission. Audiovisual Sport will now be owned by *Sogecable* (80%) and *TV3* (20%).

In these circumstances, and after consulting interested third parties, the European Commission has decided to close the case. ■

grow, but it is still too early to predict whether this will trigger the need for further initiatives. Also, copyright holders would receive complementary protection against acts of circumvention through the legal protection of anti-copying devices and rights-management systems granted by the new Copyright Directive (see IRIS 2001-5: 3). As the Commission observed, modern conditional access and digital rights management systems can use the same encryption system and face similar piracy problems. In the report, the Commission also provides a comprehensive overview on a range of further initiatives at the level of the European Community and the Council of Europe that enhance the protection of users of conditional access.

Given the existing level of legal protection arising from the Directive and other legal initiatives and the fact that the Directive is still not fully implemented in the Member States, the Commission concludes that it will not, for the time being, propose any amendments to the Directive. Instead, it will concentrate on the full implementation of the Directive, to promote and improve practical and efficient enforcement of its provisions jointly by industry and national authorities and to further promote the coherent application of European rules against piracy of electronic pay services, also within the wider context of the Council of Europe. One point that the Commission repeatedly stressed was that rights holders and service providers also have a responsibility to actively pursue their own efforts to improve the situation regarding electronic access control. Specific reference was made to the need to find contractual solutions to provide legitimate non-resident subscribers with a means of access to protected electronic pay services under reasonable, non-discriminatory and transparent conditions throughout the Internal Market. The Commission observed that the fact that citizens from one country are excluded from accessing services from another country would not only hamper the free flow of services within the Internal Market (this was also an important finding of the European Commission's report on the application of the Cable and Satellite Directive, see IRIS 2002-9: 6), but that this would also create incentives for citizens to circumvent them, as they would have otherwise no possibilities to access those services, even if they were willing to pay for them.

Finally, the Commission announced that should a further extension of the Directive be discussed in the future, this would most likely occur in the context of harmonis-

ing and joining efforts to fight all kinds of piracy under the CAD and the Copyright Directive. Initiatives against piracy for non-commercial purposes could become a point of discussion too, although this would imply a fundamental change in Community policy and might have an impact on associated legislation. Last but not least, the report addresses the fight against forms of piracy that have emerged through the use of the Internet. ■

● **Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the implementation of Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, and consisting of, conditional access, Brussels, 24 April 2003, COM(2003) 198 final, available at:** http://europa.eu.int/comm/internal_market/en/media/condac/functioning/index.htm

● **Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access, Official Journal L 320, 28 November 1998, p. 54 – 57, available at:** http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31998L0084&model=guichett

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

● **Institute for Information Law (IViR), Study on the use of conditional access systems for reasons other than the protection of remuneration, to examine the legal and the economic implications within the Internal Market and the need of introducing specific legal protection, Report presented to the European Commission, April 2000, available at:** <http://www.ivir.nl/publications/other/ca-report.html>

EN

● **Report from the European Commission on the application of Council Directive 93/83 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable, Brussels, 26 July 2002, COM(2002) 430 final, available at:** http://europa.eu.int/eur-lex/en/com/rpt/2002/com2002_0430en01.pdf

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

European Commission: EU Tables its Offer in WTO Services Negotiations

On 29 April 2003, the European Union tabled its initial offer on services in the framework of the ongoing negotiations under the General Agreement on Trade in Services (GATS) and in the context of the Doha Development Agenda (the current round of WTO negotiations – see IRIS 2003-4: 3-4).

The offer proposes improved access for foreign competitors to a number of sectors in the European Union, including, *inter alia*, telecommunication services. These are defined to cover the transmission of electromagnetic signals – voice, data, images – other than broadcasting (they do not include the transmission of content via a telecommunications service). With regard to this sector, the offer proposes to grant foreign competitors full access to the internal market, while at the same time

safeguarding the European Union's right to lay down its public service objectives for such services. The offer also proposes to remove a number of existing restrictions, such as for example the prohibition upon telecom companies to engage in non-telecom activities in Greece.

As regards audiovisual services, no changes are proposed to the current regime. Thus, the offer contains no commitments in this sector and provides for the maintenance of all the exceptions to the Most-Favoured-Nation clause listed by the EU in the Uruguay Round, covering, *inter alia*, co-production agreements and the preferential treatment of audiovisual works from the EU and other European Countries. The aim of this approach is to preserve freedom for the European Union and the Member States to maintain and further develop their policies and measures in the audiovisual field. The sector ("audiovisual and cultural services") is defined as including motion picture and videotape production and distribution, motion picture projection, radio and television, radio and television transmission and sound (music) recording services.

On the other hand, 16 countries have made requests to the EU that it open its audiovisual market. An important initiative is that a significant number of these requests come from developing countries. In a speech to the Culture Commission of the European Parliament, trade Commissioner Pascal Lamy noted the need for the European Union to reflect on the best way of addressing the legitimate interests of developing countries in this field. The Commissioner stressed how the promotion of cultural diversity presupposes openness to the demands of these countries and that bilateral co-operation will be an important way forward. ■

Sabina Gorini
Institute for
Information Law (IViR)
University of Amsterdam

● **"WTO SERVICES EU proposes to improve trading opportunities giving developing countries a better deal", Press Release of the European Commission IP/03/582 of 29 April 2003, available at:** http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/582|0|RAPID&lg=EN&display=

DE-EN-ES-FI-FR-IT-PT

● **Trade in Services, Conditional offer from the EC and its Member States, 29 April 2003, available at:** http://europa.eu.int/comm/trade/index_en.htm

EN

● **"Les négociations sur les services culturels à l'OMC" (The negotiations on cultural services at the WTO), Speech by Pascal Lamy to the Culture Commission of the European Parliament, 19 May 2003, available at:** http://europa.eu.int/comm/trade/index_en.htm

FR

European Commission: Proposal to Extend the MEDIA Programme and the Culture 2000 Programme up to 2006

The European Commission has recently made a proposal to the Council and the European Parliament to extend the duration of the existing MEDIA and Culture 2000 programmes up until the end of 2006. At present, the programmes are due to expire respectively at the end of 2005 and at the end of 2004. The aim of this extension would be to ensure continuity of Community action in the audiovisual and cultural fields "until such time as the EU's new financial perspective kicks in, in 2007".

The MEDIA Programme aims to foster audiovisual creativity and strengthen the competitiveness of the audiovisual industry in Europe, through a number of support

measures relating to the development, distribution and promotion of audiovisual works (MEDIA Plus programme instituted by Council Decision 2000/821/EC) and the training of audiovisual industry professionals (MEDIA Training programme instituted by Decision 163/2001/EC of the European Parliament and of the Council). It entered into force in January 2001 and currently covers the period 2001-2005 (see IRIS 2001-1: 3). The Culture 2000 programme provides support for co-operation projects in all artistic and cultural sectors (e.g. performing arts, visual arts, heritage conservation) with the aim of promoting European cultural diversity and helping to create a shared cultural area in Europe.

It is proposed that the programmes be extended unchanged and that their budget be increased in the following amounts:

Sabina Gorini
Institute for
Information Law (IViR)
University of Amsterdam

● "The Commission proposes extending the Culture 2000 and the Media programmes up to 2006", Press Release of the European Commission of 16 April 2003, IP/03/549, available at:
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/549|0|RAPID&lg=EN&display=

DE-EN-FR

● Proposal for a Decision of the European Parliament and of the Council modifying Council Decision 2000/821/EC of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus – Development, Distribution and Promotion), 16 April 2003, COM(2003) 191 final, available at:
http://europa.eu.int/comm/avpolicy/media/pdffiles/promed_en.pdf

EN-FR

● Proposal for a Decision of the European Parliament and of the Council modifying Decision No 163/2001/EC of the European Parliament and of the Council of 19 January 2001 on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA – Training) (2001-2005), 16 April 2003, COM(2003) 188 final, available at:
http://europa.eu.int/comm/avpolicy/media/pdffiles/promedt_en.pdf

EN-FR

● Proposal for a Decision of the European Parliament and of the Council amending Decision No 508/2000/EC of 14 February 2000 establishing the "Culture 2000" programme, 16 April 2003, COM(2003) 187 final, available at:
http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0187en01.pdf

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

MEDIA programme: from EUR 350 million (2001-2005) to EUR 435.6 million (2001-2006) for MEDIA Plus, and from EUR 50 million (2001-2005) to EUR 57.4 million (2001-2006) for MEDIA Training;

Culture 2000 programme: from EUR 167 million (2000-2004) to EUR 236.5 million (2000-2006).

The Commission has underlined that the extension of the programmes will not prevent the EU institutions from continuing to explore "innovative approaches" within the current generation of programmes. For example, co-operation will be strengthened with the European Investment Bank under the "i2i Audiovisual" initiative. This initiative aims to facilitate access to capital for operators of the European film and audiovisual industry, through a variety of financial mechanisms. It is intended to be implemented in close co-operation with the Media programme in order to maximise the respective impact of these measures (see IRIS 2001-6: 4).

The Commission intends to present its proposals for the new generation of programmes due to start at the beginning of 2007, by the end of this year. ■

NATIONAL

BROADCASTING

AT – Public Consultation on DAB-T and DVB-T

The Austrian *Rundfunk & Telekom Regulierungs-GmbH* (Broadcasting & Telecommunications Regulator - *RTR*) has launched a public consultation procedure on the development of the Austrian requirements relating to DVB-T and T-DAB for the Regional Radio Conference (RRC-04/05) being held in 2004/2005. The overwhelming majority of European telecommunications administrations which are members of the International Telecommunication Union (ITU) have called for a revision of the Stockholm 1961 Agreement, which forms the basis of analogue TV broadcasting structures and international coordination. The revised version will contain a frequency plan for digital broadcasting in frequency bands III, IV and V, which are currently used by most terrestrial analogue broadcasters.

Stephanie Homburger
Institute of European
Media Law (EMR),
Saarbrücken / Brussels

● Public consultation on the development of Austrian requirements relating to DVB-T and T-DAB for the Regional Radio Conference in 2004/2005

DE

● Information on the RRC-04/05 is available at:
<http://www.itu.int/ITU-R/conferences/rrc/rrc-04/>

EN-FR

In accordance with media policy objectives, the Austrian consultation will lead to the drafting of Austria's requirements for the digitisation of broadcasting. Experts and interested members of the public have been invited to give their views in response to the essential questions set out by the *RTR*. These questions deal, for example, with how reception zones will be structured for terrestrial digital broadcasting (DVB-T and T-DAB), how many technical overlaps are considered necessary for DVB-T to meet the needs of the Austrian population, and what kind of demand for terrestrial digital radio (T-DAB) there is likely to be in the future. These questions are also significant insofar as the latest digital broadcasting technology can be used to create two fundamental types of radio network structures - Multi Frequency Networks (MFN) and Single Frequency Networks (SFN) - which each have advantages and disadvantages. The frequency plan to be drawn up by the *RTR* should incorporate the advantages as far as possible. The *RTR* is therefore dependent on information about usable infrastructures and supply needs, which can be obtained at least partly through the consultation process. ■

AT – Commercial Broadcasting Study

In May 2003, the Austrian *Rundfunk & Telekom Regulierungs-GmbH* (Broadcasting & Telecommunications Regulator - *RTR*) published a study on the development of the broadcasting market. The study examines the fundamental question of whether the dual broadcasting system, ie the introduction of commercial radio, has been beneficial for the various market players.

The results of the investigation into whether consumers consider that commercial radio in particular enhances the variety of programmes and opinions represented, and whether advertisers have embraced the new

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

● Volume 1/2003 of the *RTR-GmbH* journal is available in German at:
[http://www.rtr.at/web.nsf/lookuid/BD1084D7788D68FDC1256D2B003878E8/\\$file/5JahrePrivatradio.pdf](http://www.rtr.at/web.nsf/lookuid/BD1084D7788D68FDC1256D2B003878E8/$file/5JahrePrivatradio.pdf)

DE

market, will be used to draw up a list of requirements for the future structure of the corresponding legal framework. The authors conclude that, despite some progress noted in the report, the dual broadcasting system is not yet as balanced as it should be. They stress that the public service broadcaster *Österreichische Rundfunk (ORF)* operates four radio stations, three national and one regionalised. Meanwhile, the commercial sector runs numerous local and regional channels, but none at national level. Furthermore, the *ORF*, the leading programme provider, also owns the infrastructure for terrestrial radio and television transmission. The funding of the *ORF* through licence fees and advertising revenue also remains a topic of debate, as does the monitoring of the *ORF* and private broadcasters by various authorities, as required by advertising regulations. ■

AT – Bill on Creation of Digitisation and TV Film Support Funds

At the end of March, the *Bundeskanzleramt* (Federal Chancellery) presented for discussion a draft Federal Act amending the *KommAustria-Gesetz* (*KommAustria Act*) and the *Privatfernsehgesetz* (Commercial Television Act). It invited interested parties to submit their reactions to the document by 24 April 2003.

A substantial part of the Bill is devoted to the establishment of two new funds: a digitisation fund and a TV film support fund. Both funds are to be allocated EUR 7.5 million per year from the revenue generated by the Federal Government from TV and radio licence fees (money which was previously not earmarked for any specific purpose). The Bill proposes that both funds be administered by the *Rundfunk und Telekom Regulierungs-GmbH* (Broadcasting and Telecommunications Regulation Company - *RTR-GmbH*)

Albrecht Haller
University of Vienna

● Draft Federal Act amending the *KommAustria-Gesetz* (*KommAustria Act*) and the *Privatfernsehgesetz* (Commercial Television Act), available at:
<http://www.bka.gv.at/medien/entwurf%20kog%20prtvg.pdf>

DE

BA – Editorial Principles of the Public Broadcasting Service

In early May, the Editorial Principles of the Public Broadcasting Service (PBS) in Bosnia-Herzegovina were adopted. The PBS in Bosnia and Herzegovina consists of the state-based Federal RTV B-H (FTV B-H) and Radio Television of *Republika Srpska* (RT RS), and of RTV B-H, serving as a countrywide broadcaster.

Dusan Babic
Media Expert,
Sarajevo

● Editorial Principles for the Public Broadcasting Service in Bosnia and Herzegovina

EN

BE – First Decision of Council for Journalism – No Infringement of Journalistic Ethics by Commercial Television

In December 2002, the Council of Ethics of the Belgian Association of Professional Journalists was replaced, in the Flemish Community, by the *Raad voor de Journalistiek* (Council for Journalism). Journalists, publishers and broadcasting organisations are represented in the new Council. 6 of the 18 members have been co-opted from among judges and academics. The Council is a self-regulatory body without any disciplinary power. Its decisions are made public and are intended to encourage compliance with journalistic ethics.

The first case decided by the new Council for Journalism concerns an interview with Marc Dutroux by a journalist of the commercial broadcasting organisation *VTM*. The journalist, T. Van Hemeledonck, succeeded in sneaking “undercover” into the jail where M. Dutroux is held, as he was

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

● Decision of 8 May 2003, *Raad voor de Journalistiek* (Council for Journalism), case of *Telefacts/VTM*, upon referral by the Belgian Association of Professional Journalists in Belgium, available at:
http://www.rvdj.be/pdf/beslissing_08_05_03.pdf

NL

BG – Council of Electronic Media Bans Advertising in Sponsorship Spots

At its regular meeting on 12 May 2003, the Council of Electronic Media discussed the implementation of the

and the broadcasting industry itself (i.e. the administrative body of the broadcasting regulatory authority).

The purpose of the digitisation fund is to support the technical transition to digital broadcasting. In particular, money from the fund may be used to carry out academic studies and analyses, to subsidise pilot projects and research, to develop programming and additional services, to inform the public, to plan and construct the terrestrial broadcasting infrastructure, to fund the purchase of the necessary terminal equipment, to provide financial incentives for consumers and to finance the costs incurred by *KommAustria* and the *RTR-GmbH* as they draw up and implement the digitisation strategy.

The TV film support fund is designed to help finance the production of TV films, series and documentaries by producers who are independent of broadcasters. The fund may be used for the creation of basic screenplay ideas, project development, film production and to pay for the additional staff and equipment required by the *RTR-GmbH*.

According to the Bill, the *RTR-GmbH* is required to draw up guidelines for the allocation of these funds. *KommAustria* must be given the opportunity to air its views before money is allocated from the digitisation fund; grants from the TV film support fund must be backed up by a written, reasoned report by a specially appointed jury of experts.

The amended Act is due to enter into force on 1 January 2004. ■

The Editorial Principles set standards which the managers, editors and journalists of the PBS shall respect in their reporting. The guidelines are particularly focussed at helping journalists to act in a more responsible manner. Therefore the guidelines have been derived from the main European professional codes of conduct. However, there are some new approaches, - especially mirroring events post-September 11th - on liability regarding media reporting, e.g. reporting on violence and criminal acts, paragraph 4, or reporting on terrorism and state security issues, paragraph 5. ■

assumed to be accompanying a senator who had obtained authorisation to visit M. Dutroux in prison. *VTM* broadcasted the audio-tapes of the conversation with M. Dutroux both in the news and in an information programme.

The Council for Journalism is of the opinion that the *VTM* journalist did not infringe any rule of the codes of journalistic ethics. The Council recognizes the principle that keeping silent one's identity as a journalist (“undercover journalism”) should only be an exceptional practice, confined to circumstances in which classical methods of newsgathering are not sufficient and only as far as the issue is related to facts that are relevant for society.

The Council considers that this represented an opportunity for the *VTM* journalist to talk to a person suspected of major crimes and that M. Dutroux is to be considered a public person, whose case has influenced public debate in Belgium. Because the journalist could in these circumstances have reason to believe that a conversation with Dutroux could lead to statements with an important societal value (“*grote maatschappelijke betekenis*”), the Council considers the conduct of T. Van Hemeledonck legitimate. The Council comes to the conclusion that the journalist acted correctly from the point of view of journalistic ethics. ■

provisions of the Radio and Television Law and the European Convention on Transfrontier Television regarding sponsorship of radio and TV programmes. After a discussion the Council decided that the development of broadcasters' commercial practice calls for further clarification

of the Bulgarian Radio and Television Law's provisions concerning sponsored broadcasts. These provisions are as follows:

"Section 92. - (1) Sponsored broadcasts shall not promote the sale, purchase, or use of goods and services of the sponsor or of a third person, especially by mentioning those goods and services in the broadcasts.

(2) The name of the sponsor and/or his trade mark shall be mentioned, represented, or otherwise identified

Antoaneta Arsova
Association of Bulgarian
Broadcasters, Sofia

● Decision of 12 May 2003

BG

CH - End of Dispute between Cablecom and Teleclub

The dispute between *Cablecom AG* and *Teleclub AG* (see IRIS 2002-7: 7), which has been raging for months, has been resolved, at least for the time being. As a result, *Cablecom* must continue to include *Teleclub's* digital pay-TV channels in its cable network. This follows a decision taken in March 2003 by the Swiss *Rekurskommission für Wettbewerbsfragen* (Appeals Commission for Competition-related Questions - *Reko/Wef*), in which the appeal by *Cablecom AG* against a temporary, "precautionary" order by the *Wettbewerbskommission* (Competition Commission - *Weko*) was finally dismissed as unfounded.

Under the precautionary order, issued by the *Weko* last

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

● Decision of the *Wettbewerbskommission* (Competition Commission), 26 September 2002, available at <http://www.wettbewerbskommission.ch/>

● Interim decision of 29 October 2002 and decision by the *Rekurskommission für Wettbewerbsfragen* (Appeals Commission for Competition-related Questions) of 20 March 2003, available at <http://www.reko.admin.ch/de/entscheide/index.htm>

DE-FR-IT

DE - End to Dispute Over Transmission of "Saving Private Ryan"

The legal dispute over whether the broadcast of the film "Saving Private Ryan" was admissible (see IRIS 2003-4: 6 and IRIS 2002-8: 6) has been resolved. *ProSieben Sat.1 Media AG* (*ProSieben*) and the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Media Authority - *MABB*) had taken their dispute over the admissibility under the youth protection law of the broadcast of an edited version of the film at 20.15 to a number of different courts. On 5 January 2003, *ProSieben* had then broad-

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

● MABB press release of 28 March 2003, available at: <http://www.mabb.de/start.cfm?content=presse&template=pressemeldungsanzeige&id=609>

DE

DE - No Guaranteed Right to Cancel Pay-TV Subscription

In a ruling of 13 March 2003, the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) decided that pay-TV subscribers have no legal right to cancel a subscription agreement. Such agreements do not necessarily need to include a clause concerning power of revocation in favour of the subscriber.

The plaintiff had referred to Article 505 para. 1 no. 2

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

● Ruling of the *Bundesgerichtshof* (Federal Supreme Court - *BGH*), 13 March 2003 - I ZR 290/00

DE

only at the beginning and at the end of the broadcast."

On some occasions broadcasters use parts of commercials as sponsorship trailers. The Council referred to Article 17 of the European Convention on Transfrontier Television and its Explanatory Report, as well as to Additional Provision 1, Subsection 20 of the Bulgarian Radio and Television Law (definition of sponsorship), and concluded that neither the Convention, nor the national legislation allow sponsorship broadcasts to appeal for the purchase of products of a certain brand or to make direct references to a certain product in the sponsored programme itself. The Council therefore decided to ban direct advertising in sponsorship broadcasts. The sponsorship broadcasts shall no longer include promotion of the sponsor's products or services and shall no longer mention the sponsor's address, phone number, or other contact information that could facilitate the acquisition of the sponsor's products or use of its services. ■

September, *Cablecom* had been obliged immediately to transmit the channels of *Teleclub AG* via its cable network. In October 2002, the *Reko/Wef* had dismissed, through an interim ruling, *Cablecom's* request for the suspensory effect of its appeal against the decision to be restored.

By its latest decision, the *Reko/Wef* has once again confirmed the legality of the measures imposed by the *Weko*. It agrees with the *Weko's* view that *Cablecom* was abusing its dominant market position as Switzerland's leading cable network operator by refusing to include the digital channels of *Teleclub AG* in its cable network and by demanding that *Teleclub AG* stop using its own set-top box for receipt of its channels. It also ruled that *Cablecom* was failing to fulfil the duties set out in its broadcasting licence. It said that the precautionary order had been urgently required and an was an appropriate means of preventing *Teleclub* from almost certainly being put at a huge competitive disadvantage which would have been difficult to remedy. ■

cast the film at 20.15 without the necessary permission, whereupon the *MABB* launched proceedings to fine the broadcaster. Those proceedings have now been concluded in agreement with *ProSieben*. The *MABB's* Media Council has issued a formal complaint concerning the broadcast; *ProSieben* will accept the complaint and undertake only to show the film again if it has indisputable permission to do so. In addition, a settlement has been agreed between the *Freiwillige Selbstkontrolle Fernsehen* (Voluntary Self-Regulatory Authority for Television - *FSF*), the *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*) and *ProSieben*, with the *MABB* also involved. *ProSieben* has also promised to demonstrate its responsible attitude for youth protection by various means. ■

of the *Bürgerliches Gesetzbuch* (Civil Code - *BGB*), under which consumers are legally entitled to cancel hire purchase agreements concerning goods of the same kind. Since this rule only applies to goods (and not services), it would only apply by analogy in this case. However, the *BGH* ruled that there was no suitable loophole in the law to justify such an application. The legislator had not believed it was sensible for contracts of service to be covered by the rules governing hire purchase agreements. It had also refrained from establishing a general legal principle entitling consumers bound by long-term contracts with payments outstanding to cancel such agreements. ■

FR – The Government Adds to the Preliminary Bill on Electronic Communications

The Government, which wished to add two points to the preliminary bill on electronic communications (see IRIS 2003-5: 15) – extension of the powers of the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body – CSA) in terms of the economic regulation of the audiovisual sector and support for the development of local television stations – revealed on 14 May 2003 the additional provisions on these points.

Firstly, the CSA would be given the power to settle disputes between editors and distributors of services. Previously, the CSA only had such power in matters concerning the distribution of terrestrially broadcast digital television. Thus the CSA's powers would be extended to include all modes of distribution, without interfering with the prerogatives of the other regulatory authorities (ie the *Conseil de la concurrence* (competition council) and the *Autorité de régulation des télécommunications* (telecommunications regulatory authority)).

The preliminary bill also includes a set of provisions intended to promote the development of local television stations, perfectly in keeping with the proposals put forward in the supplementary report on terrestrially broad-

Amélie Blocman
Légipresse

● **Le Gouvernement complète l'avant-projet de loi sur les communications électroniques pour favoriser le développement des télévisions locales et doter le CSA de nouveaux pouvoirs de régulation économique** (The Government supplements the preliminary bill on electronic communications to encourage the development of local television stations and to give the CSA new economic regulation powers), press release from the *Direction du développement des médias* (Media Development Directorate), available at: <http://www.ddm.gouv.fr/actualites/87.html>

FR

FR – Mission on the “Television without Frontiers” Directive

The “Television without Frontiers” Directive is currently under re-examination and, in accordance with its Article 26, the Commission has embarked on three assessment studies on the text and is now commencing public consultation intended to examine “application of the Directive and, if appropriate, to draw up new proposals with a view to its adaptation to developments in the field of television broadcasting, particularly in the light of recent technological developments”. The consultation covers the main sensitive areas of the Directive – promotion of European works, advertising, protection of minors, access to events of major interest, implementation of the Directive, and extracts. It should result, at the end of 2003 or early in 2004, in a communication plus any proposals for revision. With this in view, on 2 May 2003 Jean-Jacques Aillagon, the Minister for Culture and Communi-

Amélie Blocman
Légipresse

● **Mission entrusted by the Minister for Culture and Communication to Bernard Miyet on 2 May 2003**, available at: <http://www.culture.fr/culture/actualites/communiq/aillagon/bmiyet.htm>

FR

IT – New Contract of Service for the Public Service Broadcaster RAI

On 23 January 2003 the Ministry of Communications and RAI, the Italian public service broadcaster (PSB), signed a new Contract of Service valid for the period

cast digital television submitted to the Prime Minister by Mr Michel Boyon on 28 February 2003. At the request of Jean-Jacques Aillagon, the *Direction du développement des médias* (Media Development Directorate) has carried out a study, not yet made public, on conditions for the development of local television, in liaison with the actors concerned. This document has largely inspired the provisions supplementing the preliminary bill. Firstly, the rule prohibiting any one operator holding more than half the capital of a company running a local television station would be repealed. The rule prohibiting concurrent national and local authorisations would be relaxed, leaving the ban applicable only to the concurrence of authorisations for both a national service broadcaster with an aggregate audience greater than 2.5% and a local service in analog mode, with a view to promoting the use of terrestrially broadcast digital television. The ceiling of six million inhabitants applicable where a number of local authorisations are concurrent would be increased to ten million. The restrictions on the creation of local television channels by local authorities and their groupings would be lifted. These legislative provisions supplement the regulations already announced concerning the production obligations of local television stations and their participation in the financing of reorganising the analog frequencies made necessary by the introduction of terrestrially broadcast digital television. Lastly, the Government has announced that the tax measures proposed in Mr Michel Boyon's second report would be examined carefully in the context of the bill on the 2004 Budget. Lastly, the preliminary bill increases from five to seven the number of authorisations for a national service broadcast terrestrially in digital mode that may be held by any one group. This provision confirms the importance the Government places on the digitalisation of terrestrially broadcast television.

The text will now be sent to the CSA and the competition council for their opinion before being submitted to the *Conseil d'État*. Meanwhile, anyone concerned may send their comments to the Media Development Directorate. ■

cation, entrusted Bernard Miyet, diplomat and chairman of the managing board of the SACEM, with a mission involving the “Television without Frontiers” Directive. The Minister indicated that the mission, which is to last until the end of the year, will consist of “presenting France's position on the Directive to our European partners and to professionals, more particularly to make them aware of the need to maintain the Directive”. Thus the objectives are clearly expressed – to establish, in liaison with the office of the Minister for Culture and in coordination with the offices of the Minister for Foreign Affairs and the Minister with responsibility for European affairs, the necessary contacts within the member States of the European Union, at the level of ministers with responsibility for communication and their collaborators, to meet professionals, and to contribute to making France's point of view known in the European institutions. France, which considers that the “Television without Frontiers” Directive, together with the MEDIA programme, constitutes the lynchpin of European policy, wishes to affirm its commitment to the maintenance of the Directive. France does not want to see the consultation result in a revision exercise that might challenge the logic of the text. ■

2003-2005. The Contract has to be renewed every three years according to a Convention binding both parties and signed in 1994, and has to lay down the public service broadcasting duties of the PSB. In particular, it concerns radio, television broadcasting and multimedia services, editorial content, technological services for the produc-

tion and transmission of signals, financial management, auditing and monitoring systems and criteria for the financing through the public licence fee.

The general principles of the remit are established in Chapter I (articles 1 and 2), while the following Chapter deals with programming duties. According to article 3, public television broadcasting has to offer, *inter alia*, news and information items, programmes related to public institutions and public or social events, programmes aimed at minors and with an educational and cultural aim, scientific and environmental programmes, sport events, films of particular artistic value and European films and fictions. At least 65% of the total annual programming of all three PSB channels (*RAIUNO*, *RAIDUE* and *RAITRE*) and at least 80% of the programming of the

Maja Cappello
Autorità per le
Garanzie nelle
Comunicazioni

● **Contratto di servizio tra il Ministero delle comunicazioni e la RAI – Radiotelevisione Italiana S.p.A. (Contract of Service between the Ministry of Communications and the Italian radio and television broadcaster RAI), 23 January 2003, published in Gazzetta Ufficiale (Official Gazette) of 12 March 2003, available at:**
http://www.comunicazioni.it/it/DocSupp/627/contratto%20rai%202003_bis.pdf

IT

MD – Broadcasting Law Amended

On 13 March 2003, changes in the Law of Moldova Regarding the public national broadcasting organisation Company "Teleradio-Moldova" No.1320-XV of 26 July 2002 were adopted.

The most essential rectifications were made in association with article 13 of this Law, where the main norms regarding the Supervisory Council of the Company are stated. While definition of the status of the Supervisory Council has not been changed, the procedures in regard to the formation of this body were. The Supervisory Council consists of 15 members now appointed from among outstanding figures in the fields of culture, sciences, education, mass media, as well as other representatives of the civil society, who are designated for a term of five years. It should be noted, that the law now states the exact number of representatives to be

Olga Motovilova
Moscow Media Law
and Policy Center

● **Legea Republicii Moldova cu privire la institutia publica nationala a audiovizualului Compania "Teleradio-Moldova" N 1320-XV din 26.07.2002 Monitorul Oficial al R.Moldova N 117-119 din 15.08.2002 (The law of Republic Moldova no.107-XV from 13 March 2003 "About modification and additions in the Law about public national broadcasting organisation Company "Teleradio-Moldova" N 1320-XV from 26 July 2002" was officially published in Monitorul Oficial al R.Moldova N 55 on 25 March 2003 and is available in Moldovan and in Russian at:**

<http://www.docms.md/asp/viewfile.asp?Lang=1&ID=397337787445402&trans=&oldID=>

MO-RU

YU – Serbia and Montenegro: Broadcasting Council Appointed

The National Assembly of Serbia has appointed 8 members to the Council of the Broadcasting Agency during April 2003.

The appointment of the Council members was a necessary step for the implementation of the Law on Broadcasting, adopted in July 2002 (see IRIS 2002-8: 11). The appointment came – after a delay of some 6 months – on 11 April 2003. Moreover, there were some procedural irregularities casting a shadow upon elected Council members proposed by the Government of Serbia and the National Assembly of Serbia. So their short biographies were not published for 30 days prior to election as required by the Law – in fact, one of them was nominated only 3 days prior to election, and the other on the very day of election. It turns out that those two members have, until

Miloš Živković,
Assistant Professor,
Belgrade University
School of Law
Legal counsel,
Živković & Samarđžić
Law offices

third channel (*RAITRE*), transmitted between 6.00 and 24.00, has to be devoted to the public programmes mentioned. Radio broadcasting (article 4) has to include news, music, culture and information.

Specific rules are set out in Chapter 3: article 6 concerns the protection of minors, providing that between 7.00 and 22.30 all programmes have to be suitable for family viewing. At least 10% of the programmes transmitted during this part of the day have to be specifically made for children. Further provisions (articles 7-14) concern specific programming for handicapped people, educational programmes and European and international production.

Chapter 4 concerns technical investments in order to improve the quality of the signals and the coverage of the territory (articles 15-22). Article 23 charges *RAI* with the duty to facilitate the conversion from analogue to digital terrestrial transmissions, which has to be illustrated in a project to be presented to the Ministry, while the following provisions (articles 24-26) deal with innovation and research, multimedia and satellite services.

Chapter 5 (articles 27-29) deals with financing and accounting, while Chapter 6 (articles 30-33) concerns monitoring and control of the fulfilment of the duties provided for in the contract.

Before 1 July 2005 the Ministry and *RAI* have to start negotiations for drawing up a new contract for 2006-2008. ■

designated on the Supervisory Council by public bodies, journalists of the Company, artistic unions and other organisations (all of them are listed in the law).

Meetings of the Supervisory Council are valid if at least two-thirds of its members are present. Decisions are taken by a simple majority. The Supervisory Council exercises activities on the basis of the Statute of the Council approved by the majority of votes of appointed members.

The grounds for a recall of a member of the Supervisory Council by the public body or the organisation that appointed him are also new. They can be: his/her conviction for a crime that came into force by a verdict of court; voluntary resignation, loss of citizenship of the Republic of Moldova, incompatibility with the post (meaning that members of the Supervisory Council cannot at the same time be functionaries of national public bodies or national bodies of public management).

The most important innovation is that the Chairperson of the Company is to be appointed by the Supervisory Council itself (not by the Parliament, as hitherto) for a term of 5 years, and now he/she can be re-appointed for a new five years' term. At the same time the dismissal of the Chairperson is possible by a vote of not less than 11 of the Supervisory Council members in favour of such a decision. (Article 18). ■

very recently, been connected with a broadcasting organization from Belgrade. Also, the same two persons have been giving extremely sharp and irreconcilable statements about existing broadcasters in Serbia, which gave rise to questions about their impartiality by two broadcasters' associations and a journalists' association. These associations, which have also requested the Assembly to revoke the two alleged irregularly appointed members and repeat the procedure, are protesting because of the fact that decisions important to the media are passed during a state of emergency (see IRIS 2003-4: 15), and also with limited possibilities for public control over government actions. Since the council consists of 9 members, the outstanding appointment of the ninth by the National Assembly is in progress – the nomination, according to the Law to be done by the 8 already elected Council members, occurred on 24 April 2003. Once the Council is complete, the first tenders for national coverage are expected to be issued. ■

FILM

DE – Review of Media Decree on Taxation of Film and TV Funds

For some time now, the taxation of media and film aid funds in Germany has again been a topic of debate in economic and legal circles. The discussions have been triggered by announcements from the *Bundesfinanzministerium* (Ministry of Finance) that the current *Medienerlass* (Media Decree) of 23 February 2001 is to be amended.

For example, at a conference in Berlin on 10 February 2003 (*"The First Annual European Film Finance Forum – New Financial Perspectives for the Film Industry"*), the Parliamentary State Secretary of the Federal Minister of Finance stated that the Media Decree would be closely scrutinised and possibly revised.

As a result, film industry investors are now worried that such a reform might mean that, from a fiscal point of view, investors in film aid funds will no longer be considered as film producers but as investors in film rights. This would be to their financial disadvantage, since as

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

● Media Decree of 23 February 2001, No. IV A 6 – S 2241 – 8/01 available at <http://www.bundesfinanzministerium.de/>

● Speech by Parliamentary State Secretary Dr. Barbara Hendricks concerning film finance, film support and the Media Decree, 10 February 2003, available at: http://www.film20.de/down/Rede_Hendricks.pdf

DE

FR – Minister for Culture Presents his Programme to Help the French Cinema

The Minister for Culture and Communication did not wait until the International Film Festival in Cannes before presenting to the Cabinet on 30 April a communication on policy beneficial to the cinema. In a follow up to the Leclerc Report (see IRIS 2003-3: 14), the Minister announced a number of measures intended to "diversify and perpetuate sources of financing for the cinema and contribute to increasing the number of works being filmed in France". For this, the video sector and also the regional authorities will take over the financing of cinematographic production arising out of television.

As part of the examination of the Lending Libraries Act, the National Assembly had already adopted a government amendment in early April that changed the basis for assessment for the tax on videos to be levied from 1 July on the public sale price, leaving the rate unchanged at 2%. At the same time, aid for video publishers will be expanded, particularly with a view to encouraging an increase in sales of French films.

The Minister also announced the creation of a fund enabling local authorities to assist production, through

Amélie Blocman
Légipresse

● J.-J. Aillagon, *communication relative à la politique en faveur du cinéma* (Communication on policy in favour of the cinema), 30 April 2003, available at: <http://www.premier-ministre.gouv.fr/fr/p.cfm?ref=39347#2>

FR

"film producers" they can designate all expenditure related to film production as losses. This is because Art. 5.2 of the *Einkommensteuergesetz* (Income Tax Act) implies that newly created intangible economic goods, such as film rights acquired by film fund investors, are non-taxable. This form of tax saving was, however, restricted by the 2001 Media Decree, which demanded that (after a transitional period in which investors had until 1 January 2004 to invest in funds launched before 1 September 2002) investors could only be treated as producers if the fund had a significant opportunity to influence film production and bore the economic risk inherent in the production. Most private investors do not exercise any influence on film production since they usually simply buy shares in the fund and sign a trust agreement with the fund initiator, who in turn concludes a series of contracts with screenplay writers, production teams, film distributors, advisers and insurers. Nevertheless, the Media Decree also created the possibility for film funds to retain their status as producers if they were dealing with a so-called "artificial commissioned production". Under this investment model, the fund employs an executive producer to oversee the work, while taking responsibility itself for important decisions concerning, for example, the choice of screenplay, casting, costing and the filming plan. According to the State Secretary, however, this notion of "producer" will be "closely examined once again" and, if necessary, "revised".

On 21 May, the Federal Government adopted the draft *Filmförderungsgesetz* (Film Support Act), which is designed to improve the conditions for film production and provide assistance with the marketing of German films (see IRIS 2003-5: 14). The Act contains new rules governing the taxes paid by cinema owners and video distributors, increasing revenue for the *Filmförderanstalt* (Film Support Institute) from EUR 46.2 to EUR 64.7 million. Public and private TV broadcasters have also pledged to increase their voluntary contributions, although this has not yet been agreed in writing, since the details are still to be negotiated. The revised Act is due to enter into force on 1 January 2004. ■

joint financing with the State, which would top up the funds provided by local authorities to a ceiling of EUR 10 million, compared with EUR 1.5 million at present. The Government is also considering setting up tax aids which could replace the outdated system of the companies for financing the cinematographic and audiovisual industries (*Sociétés de financement des industries cinématographiques et audiovisuelles* – SOFICA), particularly by means of a scheme currently under consideration that would make leasing available to cinematographic films. The purpose of this modernisation of the tax scheme, which will be proposed in the next Budget Act at the end of the year, is to encourage filming in France. The Government would also like to encourage the export of French films. To do so, it is planning an expansion of export aids, particularly by means of the *Institut de financement des industries culturelles* (institute for financing cultural industries – IFIC) setting up a new guarantee programme intended to allow the pre-financing of films on the basis of their export potential. Lastly, the arrangements presented make provision for support for those undertakings that are the most fragile and those productions that are the most innovative, and more particularly independent production undertakings and the technical industries in the audiovisual and cinema sectors.

Shortly after this presentation, President Jacques Chirac himself reiterated his determination and that of the Government to "support and defend" the cinema. ■

NEW MEDIA/TECHNOLOGIES

NL – Act on Electronic Signatures Adopted

Saskia Hoes
Institute for
Information Law (IVIIR)
University of Amsterdam

On 6 May 2003, the *Eerste Kamer* (the Dutch Senate) adopted the *Wet elektronische handtekeningen* (Act on electronic signatures). This Act implements into Dutch law Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (see IRIS 2000-1: 5).

● *Wet elektronische handtekeningen* (Act on electronic signatures) of 8 May 2003, available at:
<http://www.recht.nl/doc/stb2003-199.pdf>

● *Besluit elektronische handtekeningen* (Regulation on electronic signatures) of 8 May 2003, available at:
<http://www.recht.nl/doc/stb2003-200.pdf>

NL

The Act introduces a number of modifications to the *Burgerlijk wetboek* (Dutch civil code – *BW*), the *Telecommunicatiewet* (Telecommunications Act – *TW*) and the *Wet op de economische delicten* (Law on economic offences – *Wed*). The goal of the new legislation is to facilitate the use and the legal recognition of the electronic signature. According to the definition in the Directive and in the Act, “electronic signature” means data in electronic form that are attached to, or logically associated with, other electronic data and which serve as a method of authentication.

The new Act strengthens confidence in the electronic signature by providing clarity about its legal status. According to the new law, an electronic signature has the same legal effect as a handwritten signature, provided the method used for the signing complies with the essential requirements for authentication. These essential requirements are elaborated in a *Besluit elektronische handtekeningen* (Regulation on electronic signatures), which was also adopted on 6 May 2003.

Since the legal status of electronic signatures is equivalent to that of a hand-written signature, the electronic signature can be used not only in e-commerce, but also in the public sector, both nationally and Community-wide. It can for example be used in taxation, social security and justice systems.

Both the Act and the Regulation entered into force on 21 May 2003. ■

RELATED FIELDS OF LAW

CZ – Ban on Tobacco Advertising

Jan Fučík
Broadcasting Council
Prague

In May, the Parliament of the Czech Republic passed an amendment to Act No.40 on the regulation of advertising, the main subject of which was tobacco advertising.

Under the previous regulations, advertising for tobacco and tobacco products was already restricted. Advertising, for example, could not depict minors, but only people who were or who looked at least 25 years old. Tobacco advertising was forbidden in print media aimed at minors and on large billboards (over 10 square metres) in the vicinity (300 m) of schools and children’s playgrounds. Advertisements were not allowed to show people smoking or holding cigarettes or other tobacco products in their hand. Every tobacco advertisement had to carry a health warning covering 10% of the surface area.

The amendment tightens the restrictions on tobacco

● *Zákon č. 132/2003 Sb.* (Amendment to the Act on the regulation of advertising), available at:
<http://www.sbirka.cz/NOVE/03-132.htm>

CS

advertising and sponsorship. Tobacco advertising includes the free distribution of tobacco products for advertising purposes. The only exceptions are advertising aimed at traders and promotions for tobacco products at sales outlets. In sales outlets that sell different types of product, tobacco advertising may only be placed in areas in which tobacco products are actually available. It is still permissible to sell products which, under licence, bear the trademark or name of a tobacco manufacturer. Advertising must also meet the same requirements as applied previously (protection of minors, etc.). In future, the health warning must cover 20% rather than 10% of the advertising space and should read as follows: “The Health Minister warns: smoking causes cancer”. It must appear in thick black letters reaching at least 80% of the height of the designated white area. Tobacco advertising remains totally prohibited in the broadcast media (TV and radio).

The new Act is due to enter into force on 1 July 2004 in order that existing sales and advertising contracts can run their course. ■

ES – New Telecommunications Bill

Alberto Pérez Gómez
Entidad Pública
Empresarial RED.ES

In March 2003, the Spanish Government presented a new Bill on Telecommunications, which is expected to replace Act 11/1998 on Telecommunications. The main goal of this new Bill is to implement into Spanish Law the new EC Electronic Communications Framework, which was approved in April 2002 and should be incorporated into national law not later than 24 July 2003 (see IRIS 2002-3: 4).

The new legislation tries to ensure a coherent regulatory framework that will apply to all transmission infra-

● *Proyecto de Ley General de Telecomunicaciones* (Bill on Telecommunications), of 14 March 2003, available at:
http://www.congreso.es/public_oficiales/L7/CONG/BOCG/A/A_133-01.PDF

ES

structures, irrespective of the types of services carried over them (the so-called “horizontal” approach). This Bill is not intended to regulate Information Society Services (as defined in the Spanish Act 34/2002, which implemented Directive 2000/31/EC), nor does it deal with audio-visual services as such, although some of its provisions clearly affect this market. For example, the Bill includes provisions which regulate conditional access services and must carry-rules, and it confirms the current powers of the Spanish regulator *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission – *CMT*) as regards the safeguard of free competition in the audio-visual market.

The Bill is now being discussed in Parliament, and it is expected that it will be approved this summer. ■

IT – Major Changes in Italian Copyright Law

On 9 April 2003, the Italian Parliament adopted Legislative Decree n. 68/03, which is aimed at implementing 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 (see IRIS 2001-5: 3).

The text of the Decree consists of 41 articles and gives effect to the most important modification of the text of the Italian general Law on Copyright (Law n. 633/1941) since its first adoption in 1941 (see also IRIS 1997-1: 11 and IRIS 2000-9: 15).

Roberto Mastroianni
University of Naples

● *Decreto legislativo (Legislative Decree) n. 68 of 9 April 2003, Attuazione della direttiva 2001/29/CE del Parlamento europeo e del Consiglio del 22 maggio 2001 sull'armonizzazione di taluni aspetti del diritto d'autore e dei diritti connessi nella società dell'informazione (Implementation of 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), in Gazzetta Ufficiale (Official Gazette) n. 87 of 14 April 2003, available at: http://www.siae.it/documents/BG_Normativa_DecretoLegislativo_n682003.pdf*

IT

LT – Amendments of the Lithuanian Law on Provision of Information to the Public

In accordance with the National *Acquis* Adoption Programme approved by the Lithuanian Government, the Radio and Television Commission of Lithuania (RTCL) was designated to initiate and prepare amendments to the Law on Provision of Information to the Public, as the latest amendments to reach compliance with EC legislation were made in 2000. At present, the draft amendments are being prepared by the RTCL, which licenses and controls the activities of broadcasters in Lithuania.

It is planned that the major amendments will only concern the activities and the control of broadcasters, though the Law regulates all media.

Viktoras Popandopula
Radio and Television
Commission of Lithuania,
Vilnius

PL – Amendments to the Act on Telecommunications

On 9 April 2003 the *Sejm* – the lower chamber of the Parliament – adopted an Act amending the Telecommunications Law, which is based on a government proposal of 26 July 2002. The Act was subsequently sent to the *Senat*, the upper chamber of the Parliament.

The Act aims at achieving a harmonisation with provisions of EC law, the EC telecommunications packet of 2002 and also the clarification of imprecise provisions of the existing Law.

The Act provides for the obligation to separate the ownership of a stationary public telephone network owned by an operator with significant market power (SMP) and the ownership of a public network used for transmission or retransmission of television programme

Małgorzata Pęk
Nacjonaler
Broadcasting
Council,
Warsaw

● *Ustawa z dnia 9 kwietnia 2003 r. o zmianie ustawy - Prawo Telekomunikacyjne (Act of 9 April 2003 amending the Telecommunications Law, Paper No. 779), available at: <http://www.sejm.gov.pl/>*

PL

The aim of the Decree is basically to implement Directive 2001/29/EC. In doing so, the Decree modifies various provisions of the Copyright Law, *in primis* those defining the basic rights (right of reproduction, right of communication to the public, right of distribution) recognised to authors, in order to adapt the provisions of the Law to the content of the Directive (see new Articles 13, 16 and 17 of the Law, as modified by the Decree). The same goes as far as neighbouring rights owners are concerned (see new Articles 72-83 of the Law, as modified). In this context, it is specified under which circumstances the above-mentioned rights can be considered exhausted as a consequence of the owner's acts.

The exceptions and limitations enshrined in Article 5 of the Directive are reproduced in new Articles 66 to 71 of the Law, including reproduction for private use (see article 68 for reproduction on paper and 71*sexies* for reproduction of phonograms and videograms).

Article 23 of the Decree deals with protection against the circumvention of technological measures, as well as with the protection of rights-management information. Articles 24 to 37 of the Decree deal with sanctions to be applied in the case of infringements of the author's and neighbouring rights owners' rights. The relevant Articles of the general Law are modified in order to render penal and administrative sanctions particularly dissuasive and consequently more effective.

Finally, Article 39 of the Decree specifies the amount of the fair remuneration to be paid to rights owners as compensation for reproduction for private use. The amount of the remuneration ranges from EUR 0,23 per hour of recording in the case of analogue tapes, to EUR 0,87 per 4.7 gigabytes in case of DVD-R. ■

The present Law envisages the licensing of terrestrial and cable TV and radio, as well as MMDS (multi-point multi-channel distribution service), however neither satellite nor digital terrestrial TV and radio is covered. Regulations for broadcasting / re-broadcasting on Internet are also planned, in a manner to be determined by future regulation.

Apart from the new issues mentioned above, it is also planned to liberalize activities of cable TV, to modify the functions of the broadcasting regulatory institutions and to specify the requirements for TV programmes set by the European Convention on Transfrontier Television.

The amendments should be approved and adopted this year. ■

services (art. 13a). The Act introduces uniform terminology through elimination of the term 'operator having dominant position', and keeping only the term 'operator having significant market power' (art. 57.1). The act also introduces a set of provisions concerning access to the local loop (art. 87a – 87e). It obliges the SMP operators to enable other operators to have access to subscribers' local loop on the basis of transparent, objective and non-discriminatory criteria, in exchange for a fee covering justifiable costs. The Act furthermore unifies the rules governing the provision of universal service; it obliges only the SMP operator having significant market power in relation to telephone services in stationary public telephone networks to provide such service and clearly defines the extent of universal service obligations (art 49). A regulation allowing the subscriber portability of their telephone number in case of changing the operator, as well as the possibility of choosing the operator providing the telephone services and other services using the commutation techniques – pre-selection of the operator (art. 43) – has been introduced. ■

RU – Order to Hold MMDS Competitions

On 23 January 2003, the Ministry of Communication and Informatization issued Order No. 7 “on the holding of a competition for the right to use radio frequencies for the purposes of distribution of television programs using MMDS, LMDS and MVDS systems”.

To participate in such a competition it is necessary to submit an application form. The order approves this form and the format of reports on the results of competition.

The order also sets a term of one month, during which

Olga Motovilova
The Moscow Media Law
and Policy Center

● *Prikaz Ministerstva Rossiyskoi Federatsii po svyazi i informatizatsii “O provedenii konkursa na predstavlenie prava ispolsovaniya radiochastot dlya tselei raspredeleniya televizionnykh programm s primeneniem sistem MMDS, LMDS i MVDS”* (The order of the Ministry of communication and informatization “on the holding of a competition for the right to use radio frequencies for the purposes of distribution of television programs using MMDS, LMDS and MVDS systems”) no. 7 of 23 January 2003 was officially published in *Rossiyskaya gazeta* government daily on 27 February 2003

RU

US – Summary Judgment Granted for Peer-to-Peer File Sharing Programs

In an opinion by Judge Stephen Wilson, The United States District Court for the Central District of California has granted defendants Grokster’s and Streamcast’s request for summary judgment - judgment on the papers before trial- against the motion picture and recording industry plaintiffs. Grokster and Streamcast Networks are advanced peer-to-peer (P2P) File-Sharing programs that enable users to share any digital file including images, audio, video, reports, documents, etc (see IRIS Plus 2002-4). In the decision, Judge Wilson ruled that these P2P services cannot be held responsible for contributory copyright infringement, even though their software is used in some illegal file sharing activity.

The recording and movie industries relied on a straightforward application of the precedent set by the Ninth Circuit Court of Appeals February 2001 ruling against the Napster file-sharing service (see IRIS 2001-4: 13). Napster enabled users to engage in massive copying and file swapping of songs. But unlike Napster, Stream-

Anna Abrigo
Media Center
New York Law School

● *Metro-Goldwyn Mayer Studios, Inc. v. Grokster, Ltd., USDC Case No. CV 01-08541 (C.D. Cal. 2003)*, available at:
[http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/b0f0403ea8d6075e88256d13005c0fdd/\\$FILE/CV01-08541SVW.pdf](http://www.cacd.uscourts.gov/CACD/RecentPubOp.nsf/bb61c530eab0911c882567cf005ac6f9/b0f0403ea8d6075e88256d13005c0fdd/$FILE/CV01-08541SVW.pdf)

US – Despite Recent Internal FCC Infighting in the Telecoms Arena, Commission Plans to Vote on Media Ownership Rules as Scheduled

The telecom issue was whether the incumbent Baby Bell local exchange carriers -Verizon, SBC, and BellSouth- have to continue opening up their networks to competitors at a discount. For months, Mr. Powell, a Republican, made clear his preference for removing the provision, which he saw as discouraging competitors from investing in their own equipment. Powell supported “facilities-based” competition under which companies use their own equipment rather than leasing it from a competitor.

In an almost unheard of turnaround, however, Chair-

man Powell’s views became the dissenting voice in the FCC, when Commissioner Kevin Martin, another Republican, aligned himself with Democratic Commissioners Michael Copps and Jonathan Adelstein, who argued for a plan to let states decide whether to maintain regulation of switches.

the state-run Main Radio-frequency Centre is obliged to provide data on the availability of channels for MMDS broadcasting in cities and other areas.

In addition the state-run Centre of Scientific Research and Expertise in Communication will be the representative of the Ministry of Communication and Informatization during the competition for the right to use radio frequencies for the purposes of the distribution of television programmes with the use of MMDS, LMDS and MVDS systems. (Note that the word “license” cannot be used in this regard as licensing of such activity is not envisaged in Russian law). In this connection some functions, such as the publication of an announcement containing information about the competition, collecting applications from applicants and granting them registration numbers, mailing notification to applicants, etc. (in total 12 items) are transferred from the Ministry to the Centre.

The order also defines the distribution of the annual payment, paid by the winner of the competition. Out of the total payment, a sum amounting to 80 percent is transferred into the federal budget within 3 working days, 10 percent - into the budget of the subject of the Russian Federation (i.e., the province) in which territory the right of use of frequencies is applicable, and the remaining 10 percent - to the Ministry of communication and informatization to cover expenses connected to the holding of the competition. ■

cast, Grokster and Kazaa do not operate a “central server” through which members of the services pass information about songs they want to trade. Judge Wilson wrote, “Plaintiffs appear reluctant to acknowledge a seminal distinction between Grokster/StreamCast and Napster: Neither Grokster nor StreamCast provides the ‘site and facilities’ for direct infringement. In contrast, Napster indexed the files contained on each user’s computer, and each and every request passed through Napster’s servers.”

Judge Wilson’s opinion relies heavily upon *Universal Studios v. Sony Corporation*, 464 U.S. 417, the landmark 1984 Supreme Court case declaring that videocassette recorders did not create copyright infringement, even though they can be used to engage in copyright infringement. The language in that case relied upon by Judge Wilson is “The sale of copying equipment, like the sale of other articles of commerce does not constitute contributory infringement if the product is capable of substantial non-infringing uses.” Judge Wilson wrote: “here, it is undisputed that there are substantial non-infringing uses for the defendants’ software—i.e., distributing movie trailers, free songs or other non-copyrighted works; use of the software in countries where it is legal; or sharing the works of Shakespeare.” ■

man Powell’s views became the dissenting voice in the FCC, when Commissioner Kevin Martin, another Republican, aligned himself with Democratic Commissioners Michael Copps and Jonathan Adelstein, who argued for a plan to let states decide whether to maintain regulation of switches.

In what has been referred to as a “palace coup,” Mr. Martin began working on his proposed alternative, but did not inform the Chairman of his plans until one week before the FCC’s scheduled meeting-and the first day of a seven-day “blackout” period, when contact with lobbyists and legislators is prohibited.

Despite the recent setback for Michael Powell, in the area of media ownership, however, the majority of Com-

Anna Abrigo
Media Center
New York Law School

missioners have agreed to proceed with a biennial vote on 2 June 2003. The ownership rules were scheduled for debate and already had been the subject of a dozen detailed studies released by the FCC, covering topics such as news coverage in cross-owned newspapers and television, consumer substitution, program selection process, and substitutability of local newspaper, radio and television advertising in local business sales.

● **Action by the Commission of 20 February 2003, by Report and Order and Further Notice of Proposed Rulemaking (FCC 03-36) (pending publication)**

● **Media Ownership Working Group Studies, available at: <http://www.fcc.gov/ownership/studies.html>**

YU – Law on Information Adopted

After more than 2 years of work on the draft Law on Public Information (Media Law) and expert work carried out by the Council of Europe and OSCE, the National Assembly has, at its session held on 22 April 2003, adopted the Law on Public Information. The name of the Law is specific for the former Yugoslavia, but in fact it is a general media act promoting freedom of expression and particularly the freedom of media, as well as their responsibilities and liabilities.

The Act contains 103 Articles divided in 11 sections. The first section is introductory, containing only one Article on the scope of the law. The second section deals with principles of public information – among others, freedom of the media, a ban on censorship, due diligence in publishing information, special rights of ethnic groups and disabled persons, equal treatment of foreigners, ban on monopolies in public information and a reduced right to privacy for public officials. The third section defines and regulates media outlets, and section four the distribution of media. This fourth section contains 9 articles added to the draft immediately before its adoption, which relate to the possibility banning the distribution of information by a court decision, at the proposal of the public prosecutor, in the case of necessity in democratic

Miloš Živković,
Assistant Professor,
Belgrade University
School of Law
Legal counsel,
Živković & Samardžić
Law offices

● **Press Release of the National Assembly of the Republic of Serbia of 15 April 2003, available at: http://www.parlament.sr.gov.yu/content/eng/aktivnosti/skupstinske_detalji.asp?id=60&t=A**

EN

YU – Telecommunications Law Adopted in Serbia

On 24 April 2003, the National Assembly of Serbia passed the Law on Telecommunications. This followed the transformation of FR Yugoslavia into a new state – Serbia and Montenegro, under which the competence for passing telecommunications regulations has passed from the former federation to the member states.

The Act consists of 114 Articles divided into 11 sections. The first section deals with basic provisions, one of which is the separation of the scope of application of that law and the Law on Broadcasting; the second provides for the establishment of the Agency for Telecommunications, an independent regulatory body consisting of 5 members of the Governing Board with relatively broad competences; and the third deals with the issuing of licenses for open telecommunication networks and open telecommunications services (individual licenses and general licenses). According to Article 38, ISPs and

Commissioners Jonathan S. Adelstein and Michael J. Copps requests to delay the 2 June vote further so that the public could become more involved were denied personally by Chairman Michael K. Powell when he confirmed that the vote would take place as previously scheduled. "There is precedent for granting such a request," Powell said, "but it is not customary to do so over the strong objections of a majority of Commissioners who are prepared to proceed, or where Congress has statutorily set the pace of our deliberations, as is the case here."

"Media ownership rules are intended to protect and advance the cherished values of diversity, localism and competition," Powell wrote. "These values and the public interest, however, are ill-served by letting stand a body of rules that are unenforceable. When the judiciary reverses our rules, especially ones intended to promote core First Amendment values, it is incumbent on us to repair the shortcomings as quickly as possible." ■

society for preventing incitement to violent change of constitutional order, violating the territorial integrity of the Republic, for preventing war propaganda, incitement to direct violence or advocating racial, national or religious hatred that represents incitement to discrimination, hostility or violence, provided that serious and irreparable consequence that could not be prevented by other means shall directly follow from publishing such information. The fifth section regulates the so-called 'impressum', which contains data on the owner and the responsible persons in the media company, the sixth is devoted to the rights of journalists – protection of sources has been introduced into the Serbian legal system for the first time – and the seventh provides for some special obligations in the activity of public information, such as a ban on 'hate speech', ban on pornography, a duty to honour the presumption of innocence when reporting on criminal cases and the protection of minors. Section eight, the longest one (48 Articles), regulates the rights of the persons referred to in the disseminated information. It has 5 subsections – the first is devoted to the conditions for publishing information regarding the private life of a person, the second to the right of reply and right of correction, the third to omitting the publication of information, the fourth to publication of information on the outcome of criminal prosecution, and the fifth subsection to the award of pecuniary damages (civil liability of the media). The ninth section contains a provision on supervision, the tenth penal, and the eleventh the transitional provisions. ■

services of cable distributive networks related to the distribution of radio and TV programmes are subject to a general license, which must be issued in the case where the operator meets or pledges to meet the technical conditions set forth by the Agency (the must-carry rule is provided for programmes of public service broadcasters in the Law on Broadcasting). The fourth section is related to tariffs, interconnection, universal service and lease of lines, and the fifth to radio communications. The Agency shall, under Article 58, manage the frequencies, issue licenses for transmitters and links, conduct the technical survey of broadcasting equipment and keep records of relevant data in radio communications. The allotment plan is to be passed by the Government, and the assignment plan by the Ministry for Telecommunications, both according to proposals prepared by the Agency. The frequencies are awarded by issuing a license for transmitter or link. Article 82 is of particular importance for terrestrial radio and television, because it defines the relations

Miloš Živković,
Assistant Professor,
Belgrade University
School of Law
Legal counsel,
Živković & Samaržić
Law offices

between the Agency for Telecommunications and the Agency for Broadcasting. The relations should be based on co-operation between the two, where "one-stop shopping" at the counter of the Agency for Broadcasting is provided. The Agency for Broadcasting should issue invitations to tender for broadcasting licenses based upon the assignment plan created together with the Agency for Telecommunications (for the frequencies assigned for terrestrial radio and TV). After the tender is completed, along with the "broadcasting license" the Agency for Broadcasting shall attach a transmitters/links license as required, as a part of the overall license. On the inside, the Agency for Broadcasting shall request the issue of a transmitter/link license from the Agency for Telecommunications, which must issue it if the request is in

● Press Release of 22 April 2003 of the National Assembly of the Republic of Serbia, available at:
http://www.parlament.sr.gov.yu/content/eng/aktivnosti/skupstinske_detalji.asp?id=62&t=A

EN

accordance with the above-mentioned assignment plan. The sixth section of the Law on Telecommunications regulates the numeration; the seventh, standards and conditions for construction of telecommunication networks and facilities and for installation of telecommunication equipment; and the eighth contains provisions on protection of users. The ninth section refers to international telecommunications, the tenth to penal, and the eleventh to transitional and final provisions.

By adopting the Law on Telecommunication Serbia finally has a modern telecommunications legislation, which is in accordance with most European standards and directives, and therefore rid itself of the obsolete Federal and Serbian Laws on Systems of Communications dating as far back as 1988. One of the important things to be noted is that particular attention in drafting this law was given to keeping it fully compatible with the Law on Broadcasting, adopted in July 2002 (see IRIS 2002-8: 11). On the other hand, the Law does not directly regulate some of the latest issues such as digital audio broadcasting and digital video broadcasting, but it empowers the Agency and the Ministry to propose a Strategy of Development of Telecommunications, which should be adopted by the government of Serbia within 3 months of the Law's entry into force. It is to be expected that this document shall contain answers to questions relating to treatment of the new telecommunications technologies in Serbia in the coming period. ■

PUBLICATIONS

Götz von Olenhusen, A, *Film und Fernsehen – Tarifrecht – Vertragsrecht* – Deutschland, Österreich, Schweiz, Baden Baden, Nomos, 2001, 964 S. ISBN 3 – 7890 – 7586-8

Berger, Ch, *Das neue Urhebervertragsrecht*, Baden Baden, Nomos, 2003, 227 S. ISBN 32-7890-8315-1

Peinze, A, *Internationales Urheberrecht in Deutschland und England*, Mohr Siebeck, 2002, 425 S. ISBN 3-16-147727-8

Donges, P, Puppis, M, *Die Zukunft des öffentlichen Rundfunks*. Internationales Beiträge aus Wissenschaft und Praxis. Köln : Halem, 2003. ISBN 3 – 9316-0657-0

Jarren, O, Donges, P, Künzler, M, Schulz, W, Held, T, Jürgens, U, *Der öffentliche Rundfunk im Netzwerk von Politik, Wirtschaft und Gesellschaft*, Baden Baden, Nomos/Halburg, Publikationen des Hans-Bredow-Instituts, 2001 217 Seiten. ISBN 3-7890-7692-9

Roters, G, Turecek, O, Klingler, W (Hrsg.) *Digitale Spaltung, Informationsgesellschaft im neuen Jahrtausend - Trends und Entwicklungen*. Schriftenreihe Baden-Badener Sommerakademie; Band 3, 86 Seiten, 76 Abb., 2003 ISBN 3-89158-365-6

Valcke, P, Hins, W, Ellger, R, *Fernsehen im Breitbandkabel. Ein Rechtsvergleich. Die Regulierung in Belgien, Großbritannien, den Niederlanden und den USA*. Vier Rechtsgutachten im Auftrag der Kommission zur Ermittlung der Konzentration im Medienbereich (KEK) DLM-Band 27 344 Seiten, 19 Abb., 2003 ISBN 3-89158-369-9

Rideau, J, Picod, F, *Code des procédures juridictionnelles de l'Union européenne 2002*, 3^{ème} édition, Collection Litec Codes orange. ISBN 2-7110-0098-2

Kevin, D, *Europe in the Media, A Comparison of Reporting, Representation, and Rhetoric in National Media Systems in Europe*, LEA Inc., 216 pp. ISBN 0-8058-4422-8

Kiki, Ioanna, *Broadcasting Freedom according to the Greek revised Constitution*, Athens, Sakkoulas, 2003, 283 pp. Language : Greek. ISBN 960-301-701-8.

AGENDA

Intellectual Property Law Summer School 2003
18 – 22 August 2003
Organiser: IBC Global Conferences
Venue: Cambridge
Information & Registration:
Tel.: +44(0)1932 893 852
Fax: +44(0)1223 335 827
E-mail: cust.serv@informa.com
<http://www.ibclegal.com/ip2003>

IRIS on-line/Observatory Web-Site

Subscribers may access any issue of IRIS in any of the three language versions; the complete collection (from 1995 onwards) is now available on our new Internet platform at:

http://obs.coe.int/iris_online/

From time to time this web-site will also offer additional articles that were not included in the IRIS paper version. Passwords and user names are communicated on invoicing your annual subscription. If you have not yet received your user name or password enabling you to use this service, please contact

Muriel.Bourg@obs.coe.int

Information on other Observatory publications are available at

http://www.obs.coe.int/oea_public/

Document Delivery Service

Documents given as references in bold type, with the ISO language codes for the language versions available, may be ordered through our Document Delivery Service. Our charge for this service is either EUR 50/FRF 327.98 (equivalent to USD 51 or GBP 31) per document for single orders, or EUR 445/FRF 2 919 (equivalent to USD 450 or GBP 275) for a subscription for 10 documents. Postage is extra in both cases. Please let us know in writing what you would like to order so that we can send you an order form without delay.

European Audiovisual Observatory, 76, allée de la Robertsau, 67000 Strasbourg, France
e-mail: IRIS@obs.coe.int - fax: +33 (0)3 88 14 44 19

Subscription

IRIS appears monthly. You may subscribe to it (10 issues for one calendar year + a binder) at the annual rate of EUR 210/FRF 1,377.51 (approximately USD 213 and GBP 130).

Subscription Service:

Markus Booms - European Audiovisual Observatory
76, allée de la Robertsau, 67000 STRASBOURG, France
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/about/order.html>

Subscriptions will be automatically renewed for consecutive calendar years unless cancelled before 1 December by written notice sent to the publisher.