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2003 - 7

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# INTERNATIONAL

## EPRA

### European Platform of Regulatory Authorities: Report on 17th Meeting

**Susanne Nikoltchev**
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More than 100 delegates from the 35 Members of the European Platform of Regulatory Authorities (EPRA) held their 17th Meeting in Naples on 8 and 9 May 2003. The meeting marked a change in leadership. The new Executive Board of EPRA was elected. The Board now comprises five instead of three members and is chaired by Michael O'Keeffe, Chief Executive of the Broadcasting Commission of Ireland.

The first part of the plenary session was dedicated to practical aspects of a convergent regulatory authority. This was discussed with relation to the examples of AGCOM, Italy and OFCOM, United Kingdom. Both regulatory authorities result from the merging of previously independent administrations that were to look after different parts of the chain resulting in media services but that are now joined in order to allow for an encompassing approach of converging areas (for the UK the establishment process is still ongoing).

The second focal point of the plenary session was the potential for self-regulation of TV-content with respect to the protection of minors and the question of violence. The issue was illustrated by different systems for classifying media content used in France, the Netherlands and Germany. It became apparent that the degree to which those systems are based on self-regulatory structures varies and that state involvement remains important. In contrast, a purer form of self-regulation seems to be applied in Norway, whose system was the subject of a separate presentation.

Two additional topics were treated in two simultaneously meeting working groups. One workshop focused on programme performance of public service broadcasting and its mission in the digital era. This let to discussing how countries define the remit of their public service broadcasting and to what extent digital activities may be included. Also discussed were specific qualitative and quantitative content programme requirements and the monitoring of compliance with such requirements. The second working group dealt with sport, advertising and television. New forms of advertising such as minispots, virtual advertising, banner advertising in the stadium, the insertion of logos or "transparencies" were introduced and scrutinised under the provisions of the "Television without Frontiers" Directive. The examples came from Italy, Greece, the Netherlands, Spain and Sweden. ■

## COUNCIL OF EUROPE

### European Court of Human Rights: Cordova no. 1 and Cordova no. 2 v. Italy

In two judgments of 30 January 2003, the European Court of Human Rights made a restrictive application of the concept of parliamentary immunity with regard to defamatory and insulting allegations expressed by two Members of Parliament. In the case of Cordova no. 1, the senator and former Italian president, Francesco Cossiga, had insulted by way of some sarcastic letters a public

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prosecutor, Mr. Cordova, while in the case of Cordova no. 2, the same public prosecutor had been criticised in very offensive terms by a member of the Italian parliament, Mr. Vittorio Sgarbi. In both cases Mr. Cordova lodged a criminal complaint because of these insulting and defamatory statements. In the case of Cordova no. 1, the Italian Senate considered that the acts of which Mr. Cossiga was accused were covered by parliamentary immunity, as his opinions had been expressed in the performance of his parliamentary duties. In the case of Cordova no. 2, the Court of Cassation accepted also the immunity of Mr. Sgarbi, referring to the decision of the Italian Chamber of Deputies interpreting the concept of "parliamentary duties" as encompassing all acts of a political nature, even those performed outside Parliament. These findings made it impossible to continue the proceedings that were under way and deprived Cordova of the opportunity to seek compensation for the damages he alleged he had sustained.

The European Court of Human Rights, however, is of the opinion that the decisions applying parliamentary immunity to Mr. Cossiga's and Mr. Sgarbi's acts constituted a violation of Article 6 of the Convention (right to a fair trial – right of access to a court). The European Court, affirming its approach developed in the case of A. v. United Kingdom (ECourtHR 17 December 2002, see IRIS 2003-3: 3), accepts that a State affords immunity to Members of its Parliament, as this principle constitutes a long-standing practice designed to ensure freedom of expression among representatives of the people and to prevent the possibility of politically-motivated prosecutions, interfering with the performance of parliamentary duties. Hence, the restriction on the applicant's right to a fair trial pursued the legitimate aims of protecting free speech in parliament and maintaining the separation of powers between the legislature and the judiciary. In both the Cordova no. 1 and Cordova no. 2 cases, the European Court notes, however, that the statements by Mr. Cossiga and Mr. Sgarbi were not related to the performance of their parliamentary duties in the strict sense, but appeared to have been made in the context of personal disputes. According to the Strasbourg Court, a denial of access to a court cannot be justified solely on the ground that the dispute might have a political character or might relate to political activity. The Court considers that the decisions that Mr. Cossiga and Mr. Sgarbi could not be prosecuted for their alleged insulting or defamatory statements with regard to Mr. Cordova, had upset the fair balance that should be struck between the demands of the general interest of the community and the requirements of protection of the individual's fundamental rights, such as the right to enjoy a good reputation and to have this enforced before an impartial judge. The Court attaches importance to the fact that, after the relevant resolutions had been passed by the Senate and the Chamber of Deputies, Mr. Cordova had no other reasonable alternative means available for the effective protection of his rights under the Convention. The Court accordingly held that there had been a violation of Article 6 of the Convention. ■

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**● Judgments by the European Court of Human Rights (First Section), case of Cordova no. 1 and no. 2 v. Italy, Application nos. 40877/98 and 45649/99, of 30 January 2003, available at:**
**http://www.echr.coe.int**

**FR**

## Committee of Ministers: Declaration on Freedom of Communication on the Internet

On 28 May 2003, the Council of Europe's Committee of Ministers adopted a Declaration on freedom of communication on the Internet. The aim of the Declaration is to reaffirm the importance of freedom of expression and free circulation of information on the Internet. As stated in the preamble, the Committee of Ministers is concerned about attempts to limit public access to communication on the Internet for political reasons or other motives contrary to democratic principles.

The Declaration states that content on the Internet should not be subjected to restrictions that go further than those applied to other means of content delivery. Leaving open the question as to whether broacasting standards, printed press standards or other content standards should apply to the Internet, this statement nevertheless gives a clear signal that States should not invent new restrictions for this new platform of content delivery. Furthermore, it is underlined that Member States should encourage self-regulation or co-regulation concerning Internet content, these being the forms of regulation most appropriate to the new services. Highlighting the unique opportunities provided by the Internet for interactive communication, the Declaration emphasises that barriers to the participation of individuals in the information society should be removed and that the setting up of and running of individual web sites should not be subject to any licensing or other requirements having a similar effect. Falling short of stipulating a right to anonymity, the Declaration states that the desire of Internet users not to disclose their identity should be respected, subject to limitations required by law enforcement agencies in order to tackle criminal activity.

Perhaps the most important part of the Declaration is to be found in Principle 3, which deals with when and under which circumstances public authorities are permitted to block access to Internet content. Although censorship, in the sense of prior administrative control of publications, has been abolished in all Member States, new technological possibilities permit new forms of prior restrictions. There are examples, mainly outside Europe, of public authorities using crude filtering methods to censor the Internet.

The Declaration states first of all that public authorities should not employ "general blocking or filtering measures" in order to deny access by the public to information and other communication on the Internet, regardless of frontiers. With "general measures", the Declaration refers to crude filtering methods that do not discriminate between illegal and legal content. This principle, which is quite broad in its scope, does not prevent Member States from requiring the installation of filtering software in places accessible by minors, such as libraries and schools.

Member States still have the possibility, according to the Declaration, to block access to Internet content or to order such blockage. There are, however, several conditions which need to be fulfilled: a) the content has to be clearly identifiable, b) a decision on the illegality of the content has to have been taken by the competent national authorities and c) the safeguards of Article 10, paragraph 2, of the European Convention on Human Rights have to be respected, i.e a restriction has to be prescribed by law, be aimed at a lawful purpose and be necessary in a democratic society.

As stated in the Explanatory Note to the Declaration, Principle 3 is in particular aimed at situations where State authorities would block access by the people to content on certain foreign (or domestic) web sites for

political reasons. At the same time it outlines the circumstances in which, in general, blockage of content may be considered acceptable, a matter which is or will be relevant to all Member States.

Principle 6 on the limited liability of service providers is also worth highlighting. In line with the Directive 2000/31/EC on electronic commerce, it is stated that service providers should be under no general obligation to monitor content on the Internet to which they give access, that they transmit or store. They may, however, be held jointly responsible for content which they store on their servers, if they become aware of its illegal nature and do not act rapidly to disable access to it. This is fully in accordance with the Directive on electronic commerce. The Declaration, however, goes one step further, emphasising that when defining under national law the obligations of service providers that host content, "due care must be taken to respect the freedom of expression of those who made the information available in the first place, as well as the corresponding right of users to the information". The questions that are addressed here are currently widely debated, for example in the context of defamatory remarks on the Internet. The Explanatory Note underlines that questions about "whether certain material is illegal are often complicated and best dealt with by the courts. If service providers act too quickly to remove content after a complaint is received, this might be dangerous from the point of view of freedom of expression and information. Perfectly legitimate content might thus be suppressed out of fear of legal liability." ■

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● **Declaration on freedom of communication on the Internet, adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies, available at: http://www.coe.int/media**

**EN-FR**

## Standing Committee on Transfrontier Television: Report on Possible Options for Review of Transfrontier Television Convention

A recently released report by Dr Andreas Grünwald, an expert consultant of the Council of Europe's Standing Committee on Transfrontier Television, examines possible options for the review of the European Convention on Transfrontier Television (ECTT).

The report was conceived against the background of ongoing reflection on the adequacy of the existing regulatory framework for dealing with the realities of a rapidly-changing media environment. At the beginning of the report, consideration is given to one of the traditional rationales for television regulation, i.e., the medium's "special impact on the formation of opinion", which arises, *inter alia*, from its "spread effect", "suggestive power" and "immediacy". The principal features of digitalisation are also described: the increase in transmission capacities; the convergence of transmission networks and the convergence of end-user devices.

Given that the ECTT currently only applies to "(television) programme services" and that it explicitly excludes "communications services operating on individual demand", the report pays attention to the nature of new services, in particular, webcasting, video-on-demand and text-based services. The view advanced is that new services have – so far – tended to supplement conventional broadcast television, rather than replace it. Another point made in the report is that some new services can contribute to the shaping of public opinion along similar lines to television.

Following from these premises, three possible future regulatory options are contemplated: (i) adherence to the existing framework, thereby applying content regulation only to conventional television services and not to new services; (ii) partial or gradated application of existing regulation to new services (through the introduction of a "second order"/sub-category into the existing ECTT), and (iii) retention of the ECTT in its present form and introduction of a new, separate convention "to especially deal with new media content services" ("Multimedia Convention").

Flexibility, technological neutrality and practicability are identified as the desirable overriding principles that should govern any future regulatory framework. These principles serve as the starting point for the report's development of definitions of television programme services (services "that are transmitted to a general audience without operating on individual demand") and other media services. As regards attempts to define the latter, recourse could be had to three outlined approaches based on: (i) service-oriented criteria (e.g. number of users, type of content, amount of user control, amount of editorial control, etc.); (ii) "black lists" of media services, subject to regular updating by the Council of Europe or Member States; (iii) alternative criteria (e.g. relevance to the formation of opinion), but which would result in regulation that would in any event be minimalistic in character. The proposed definition for the (new) media services category under discussion is: "electronic communication service that consists in the distribution of any kind of media content other than pure unedited data to an undefined number of users".

The report concludes with a consideration of the possible architecture of future regulation: the competing merits of (i) vertical and horizontal approaches, and (ii) co- and self-regulation as alternatives to traditional regulatory models. ■

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● **Report by Dr Andreas Grünwald on possible options for the review of the European Convention on Transfrontier Television, Standing Committee on Transfrontier Television of the Council of Europe, Doc. T-TT(2003)002, 24 April 2003, available at: http://www.coe.int/T/E/Human_Rights/Media/2_T-TT/3_Texts_and_documents/T-TT(2003)002%20E%20Gr%FCnwald%20report.asp#TopOfPage**

**EN-FR**

# EUROPEAN UNION

## Council of the European Union: Safer Internet Action Plan Extended

The Safer Internet Action Plan will continue for another two years. Both the European Parliament and the Council have recently approved the extension of the original plan, which covered the period 1999-2002. The European Commission proposed the two-year extension, for 2003-2004, in March 2002 (see IRIS 2002-4: 4). On 26 May 2003, the Council of the European Union adopted the extended Action Plan with a few amendments made by the Parliament in the first reading on 11 March 2003.

The Safer Internet Action Plan plays a key role in the European Union's efforts to deal with illegal and harmful content on the Internet. One of the aims of the Plan is to create awareness amongst users, especially parents and children, of the need to be well-equipped for the Information Society. In order to combat illegal and

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harmful content and create a safer online environment, the Plan supports a network of hotlines in Europe where illegal content can be reported. The Plan also encourages self-regulation and plays a part in the development of content filtering and rating systems.

The extended Safer Internet Action Plan has a wider scope than the original plan, since it also takes account of new online technologies such as mobile and broadband content, online games, peer-to-peer file transfer and all forms of real-time communications such as chat rooms and instant messaging. The extension of the Plan to these new technologies is in line with one of the major goals of the Safer Internet Action Plan: the protection of children and minors, since they often make extensive use of these new technologies.

The Plan covers various forms of illegal and harmful content, including child pornography and content which is likely to result in physical or mental harm, as well as content which incites hatred on grounds of race, sex, religion, nationality or ethnic origin.

The sum of EUR 13.3 million has been reserved for the extension of the Safer Internet Action Plan. First calls for proposals under the Plan will be launched in July 2003. ■

● **Decision of the European Parliament and of the Council amending Decision 276/1999/EC adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks, adopted on 26 May 2003, available at:**
**http://register.consilium.eu.int/pdf/en/03/st03/st03616en03.pdf**
**DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV**

● **"EU moves against illegal and harmful content online", Press Release of the European Commission IP/03/774 of 28 May 2003, available at:**
**http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/774|0|RAPID&lg=EN&display=**
**DE-EN-FR**

## European Commission: Communication on the EU Perspective in the Context of the World Summit on the Information Society

The European Commission has recently adopted a Communication setting out the main objectives for the European Union in the context of the forthcoming United Nations World Summit on the Information Society (WSIS – see IRIS 2003-6: 2). The aim of the Summit is to develop a common vision for the Information Society and to identify a set of concrete actions towards realising this vision. It will take place in two phases: the first in Geneva in December 2003, and the second in Tunis in November 2005. At the Geneva Summit Heads of State will adopt a Political Declaration and Plan of Action, the final version of which will be negotiated in the coming months.

As recalled in the Commission's Communication, the development of the "Information Society" has, in recent years, occupied a central role in the policies of the European Union and constitutes a fundamental part of the strategy set in 2000 by the Lisbon European Council (see IRIS 2003-4: 2). Many countries are developing their own policies by reference to the EU approach (including through co-operation programmes) and the EU is expected to play a major role in the preparation of the Summit.

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The aim of the Communication is to assist in the elaboration of the EU's contribution to the Summit and of its position in the negotiations on the Declaration and Action Plan. To this end, the Communication clarifies the general context, outlines the main objectives for the Summit and then identifies the key objectives for the EU. Proposals are formulated for the position to be adopted by the EU on a number of specific issues to be addressed in the Declaration and Action Plan. The EU should notably focus on the following priorities:

- "Building the Information Society prerequisites": this includes, *inter alia*, the adoption of a core set of principles based on fundamental human rights; achieving an enabling environment and capacity building, investing first of all in people; and the promotion of cultural and linguistic diversity.
- "Developing the right tools": this includes, for instance, devising and implementing e-strategies (including appropriate regulatory frameworks) and developing key applications for e-Government, e-Learning, e-Health and e-Business.
- "Seizing the benefit of the Information Society for countries and individuals": this relates for example to the reinforcement of human rights (such as the right to communicate and access information) and the rule of law, as well as using ICTs for social development and economic growth and for the achievement of the UN Millennium Development Goals.

At its meeting of 5 June 2003, the Council adopted conclusions setting a common negotiating position for the EU at the Summit on the basis of the policy orientations laid down in the Communication. Also, the ACP-EU Council of Ministers recently adopted a joint document on the Summit. ■

● **"Commission sets out its objectives for the United Nations World Summit on Information Society", Press Release of the European Commission of 22 May 2003, IP/03/731, available at:**
**http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/731|0|RAPID&lg=EN&display=**
**DE-EN-FR**

● **"Towards A Global Partnership In The Information Society: EU Perspective In The Context Of The United Nations World Summit On The Information Society (WSIS)" Communication from the Commission to the Council and the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2003) 271 final, 19 May 2003, available at:**
**http://europa.eu.int/information_society/topics/telecoms/international/Communication/acte_en.pdf**
**DE-EN-FR**

● **Council Conclusions on World Summit on Information Society, 5 June 2003, available at:**
**http://ue.eu.int/pressData/en/trans/76064.pdf**
**DA-DE-EL-EN-ES-FI-FR-IT-NL-PT-SV**

## European Parliament: Resolution on Protection of Audio-visual Performers

On 15 May 2003, the European Parliament adopted a resolution on the protection of audio-visual performers. The resolution addresses the European Commission, which acts as the representative body of the EU in the WIPO Standing Committee on Copyright and Related Rights.

In the resolution, the European Parliament calls on the Commission to strongly support the protection of performers' rights, especially in the audio-visual field. Currently, the position of these performers at international level is very weak. This is in contrast to the position of other rights holders. Indeed, authors have protection under the Berne Convention and the WIPO Copyright Treaties, and music producers and performers under the Rome Convention and the WIPO Performances and

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Phonograms Treaty (WPPT). Even broadcasters, whom the European Parliament characterises as "users and not creators", will find their rights consolidated in a WIPO Treaty on broadcasting organisations' rights at the coming WIPO meeting, while they are also protected by the Rome Convention.

To end this unfair situation, the resolution calls on the Commission to support the adoption of an effective WIPO Treaty for the benefit of audio-visual performers' rights (attempts to reach an agreement between WIPO States on such a Treaty have up to now been unsuccessful – see IRIS 2001-2: 2). This should end the detrimental effect that the lack of protection of such rights holders has on the distribution of European audio-visual works at international level.

An Ad Hoc Informal Meeting on the Protection of Audiovisual Performances was scheduled to take place at the headquarters of WIPO in Geneva on 18-20 June 2003. The meeting has however been postponed. It is now expected to take place in the last quarter of 2003. ■

● **European Parliament resolution on the protection of audio-visual performers, 15 May 2003, available at:**
**http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=DOCPV&APP=PV2&LANGUE=EN&SDOCTA=10&TXTLST=1&POS=1&Type_Doc=RESOL&TPV=PROV&DATE=150503&PrgPrev=TYPEF@B5|PRG@QUERY|APP@PV2|FILE@BIBLIO03|NUMERO@238|YEAR@03|PLAGE@1&TYPEF=B5&NUMB=1&DATEF=030515**

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● **Information on the WIPO Standing Committee on Copyright and Related Rights and on the Ad Hoc Informal Meeting on the Protection of Audiovisual Performances is available at:**
**http://www.wipo.org/copyright/en/index.html**

**EN-ES-FR**

## European Investment Bank: Support to Danish National Public Broadcasting Institution

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The European Investment Bank (EIB) has recently granted a loan of EUR 94 million (DKK 700 million) to *Danmarks Radio* (*DR*), Denmark's national public broadcasting institution. The Bank had already granted a first loan of EUR 107 million to *DR*, in June 2001. The EIB's loan is to help finance a project for the construction in Copenhagen of a new centralised production facility for *DR*'s radio and television programmes. The project will also include the replacing of technologically outdated equipment in *DR*'s regional offices and investments in new technological developments such as digitalisation and on-line services.

The loan falls within the scope of the audiovisual component (i2i Audiovisual, see IRIS 2001-6: 4) of the EIB's Innovation 2000 Initiative (i2i). Under this initiative, which was established as a follow up to the Lisbon strategy, the EIB focuses on supporting projects that promote innovation in the European Union (specifically in the areas of human capital formation, research and development, information and communications technology networks and development of enterpreneurship). Within this framework, the aim of i2i Audiovisual is to offer the European film and audiovisual industry a package of financial instruments to help it meet the cultural and technological challenges it faces in a global economy. One of the forms of support contemplated under i2i Audiovisual (including the loan to *DR*) is EIB medium to long-term financing for large broadcasting, audiovisual production and film distribution groups to cover, *inter alia*, their infrastructure investment needs. ■

● **"EIB audiovisual support to Danmarks Radio", Press release of the European Commission BEI/03/48 of 22 May 2003, available at:**
**http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=BEI/03/48|0|RAPID&lg=EN&display=**

**DA-DE-EN-FR**

# NATIONAL

## BROADCASTING

## AT – Ruling on *ORF* Advertising

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On 19 May 2003, the *Bundeskommunikationssenat* (Federal Communication Senate -*BKS*) responded to complaints from several commercial radio broadcasters against the public service broadcaster *ORF* relating to advertising in the programme *Starmania*. The decision addressed some fundamental questions concerning the *ORF's* right to advertise.

The *BKS* noted that, under Article 14.5 of the *ORF-Gesetz* (ORF Act), *ORF* is prohibited from using so-called "product placement" unless it is necessary within the context of the programme. Consequently, a large proportion of the product placement in the *Starmania* programme had been broadcast in breach of the *ORF-Gesetz*. Furthermore, spots advertising a game bearing the name of the programme and a brand of crisps had not been labelled as advertising (Art. 13.3 *ORF-Gesetz*) and therefore contravened the principle of separation between programme and advertising material (Art. 15.2 *ORF-Gesetz*). According to Art. 13.9 of the *ORF-Gesetz*, advertising for *ORF's* radio stations may not be broadcast on its TV channels and vice-versa (cross-promotion), unless it consists of references to the content of individual programmes. The *BKS* ruled that the transmission on TV of a trailer containing a direct reference to an *ORF* radio station was in breach of this provision.

Further complaints, however, were rejected. For example, the *BKS* did not consider that advertising shown between the main *Starmania* programme and the public vote was unlawful under the terms of Article 14.8 of the *ORF-Gesetz*, since these were independent sections. The Act did not suggest that this natural break should be artificially linked by the insertion of additional programming items. Nor was it logical to argue that (admissible) product placement amounted to surreptitious advertising. Similarly, revenue from the voting (use of telephone numbers for value-added services) did not infringe the provisions of Articles 1.4, 2.1 and 4.3 of the *ORF-Gesetz*, under which *ORF* was prohibited from making a profit from its public service remit. Since *ORF* was allowed to seek and make a profit from other permissible activities and since the *Starmania* programme did not form part of its public service programming remit, the ban on profit-making did not apply in this case. ■

● ***BKS* decision of 19 May 2003, available at:**
**http://www.bka.gv.at/medien/innviertel-starmania.pdf**

**DE**

## BE – New Broadcasting Decree

**François Jongen**
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On 17 April the long-awaited new decree on broadcasting came into force in the French-speaking Community of Belgium, replacing the old decree on the audiovisual sector dating back to 17 July 1987 and the decree of 24 July 1997 on the audiovisual regulatory body (*Conseil supérieur de l'audiovisuel* – CSA) and private radio broadcasting services in the French-speaking Community (see IRIS 1997-8: 14). The new decree encompasses all the legislation on the audiovisual sector in the French-speaking Community with the exception of the public-sector service (RTBF), which remains governed by the decree of 14 July 1997 as amended by the decree of 19 December 2002 (see IRIS 2003-4: 6). The new decree also includes the various applicable directives, some of which have already been transposed into national legislation (the directives on "Television Without Frontiers", "television signals" and "conditional access services") or more recent directives (the four directives of 7 March 2002, on "access, "authorisation", "framework" and "universal service" - see IRIS 2002-3: 4).

The main new feature of the decree of 27 February 2003 is the classification of operators into three categories – service editors, service distributors, and network operators. The decree contains no less than 168 articles and is divided into 11 sections, including general provisions (the public's right to information, transparency, the maintenance of diversity), programmes (respect for human dignity and protection of minors, advertising), editing broadcasting services, offer (distribution) of services or broadcasting networks, resources, and associated services.

One section is also devoted to the CSA, which is the subject of a number of major reforms, including the abolition of the advertising board (whose tasks are taken over by the two remaining boards, the authorisation and supervision board and the opinions board) and the creation of a secretariat for investigating complaints. More importantly, the CSA now has the power to authorise service editors; only local editors (the present local and Community television stations) remain subject to Government authorisation in view of their public-service nature. Service distributors and network operators are now only subject to a prior declaration scheme. ■

● **Decree on radio broadcasting of 27 February 2003, published in the *Moniteur belge* (official gazette) of 17 April 2003, 2nd edition, available at: http://www.just.fgov.be/cgi/article_body.pl?numac=2003029202&caller=list&article_lang=F&row_id=1&numero=2&pub_date=2003-04-17&language=fr&trier=promulgation&choix1=ET&choix2=ET&ddda=2003&ddfa=2003&tri=dd+AS+RANK+&dddj=27&fr=f&dt=DECRET&ddfj=27&dddm=02&ddfm=02&set1=set+stopfile+%27MOF.stp%27&set3=set+character_variant+%27french.ftl%27&fromtab=+moftxt&sql=dt+%3D+%27DECRET%27+and+dd+between+date%272003-02-27%27+and+date%272003-02-27%27+**

**FR-NL**

## DE – *Bundesrat* Decides on "Television Without Frontiers" Directive

**Caroline Hilger**
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At its meeting on 23 May 2003, the *Bundesrat* (upper house of parliament) gave its opinion on the planned revision of the "Television Without Frontiers" Directive (Council Directive 97/36/EC amending Directive 89/552/EEC).

The *Bundesrat* welcomed the efforts already made by the European Commission to initiate a debate on the potential need for the regulatory framework to be adapted and, as part of the further development of the Directive, to take into account all specific instruments of European audiovisual policy and their interaction with other policy areas. This strategy should help to pursue the Directive's aim of promoting the global competitiveness of the European audiovisual industry while protecting cultural diversity. By this new decision, the *Bundesrat* essentially reaffirmed the views it expressed in its Resolution of 1 March 2002 (IRIS 2002–3: 8). Last year, the *Bundesrat* decided that self-regulatory mechanisms should be recognised as possible instruments for the transposition or implementation of the Directive's provisions. It also called for the abolition of programme quotas laid down in Articles 4 and 5 of the Directive and for the removal of advertising time restrictions, whilst arguing that qualitative advertising regulations should be retained.

In its new Resolution, the *Bundesrat* also stresses that the Commission does not intend to deal with issues relating to transmission or access to transmission networks, including *must-carry*. However, the *Bundesrat* also believes that, as part of the review of the Directive, it should be borne in mind that access to electronic communications networks and related services also affects content access issues; therefore, the principle of non-discriminatory, open access should also be taken into account in the revised Directive. With regard to the protection of minors, the *Bundesrat* is in favour of the proposal set out in the current revised version of the Directive whereby a common regulatory framework would apply for the protection of minors in all electronic media and information society services which have so far been excluded. This should make it easier to deal with the challenges created by convergence in the information, communication and media sectors. ■

● ***Bundesrat* Resolution on the revision of the Directive of 19 June 1997 amending Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ("Television Without Frontiers" Directive) (Bundesrat doc. 332/03 of 15 May 2003)**

**DE**

## DE – Decision on Telephone Sex Advertising and Sex Clips

**Michael Knopp**
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At its meeting on 19 and 20 May 2003, the *Direktorenkonferenz der Landesmedienanstalten* (Congress of *Land* Media Authority Directors - *DLM*) decided that the *Landesmedienanstalten* (*Land* Media Authorities) and the *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*), which was set up in April this year, should act to combat the increasing number and form of telephone sex advertisements and sex clips on television.

The decision was taken on the basis of the survey of "telephone sex advertisements and sex clips" carried out by the *Gemeinsame Stelle Jugendschutz, Programm, Medienkompetenz und Bürgermedien* (Joint Body for youth protection, programmes, media competence and public media - *GSJP*). This survey had been commissioned by the *DLM* on 18 November 2002 in response to the increase and emergence of new types of sex clips. The survey covered 17 channels. On 10 of those channels, a total of 125 separate breaches of the pornography advertising ban were suspected. Of these, 26 were thought to constitute possible breaches of the ban on pornography. The survey also revealed a rapid increase in the frequency of telephone sex advertisements and sex clips. Since they were broadcast repetitively on different channels, it was now virtually impossible for viewers to avoid them. In many cases, the advertisements had referred to further content on the Internet. The survey therefore offered further evidence of the convergence of television and the Internet. The question of responsibility for the content of advertised Internet sites remains unresolved. ■

● ***ALM* press release, available at: http://www.alm.de/aktuelles/presse/p210503.htm**

## DE – Approval for *FSF*

**Peter Strothmann**
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On 18 June 2003, the *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*) decided to approve the *Freiwillige Selbstkontrolle Fernsehen* (Voluntary Self-Regulatory Authority for Television - *FSF*).

According to Article 19.1 of the *Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien* (Inter-State Agreement on the protection of human dignity and of minors in broadcasting and telemedia), approved voluntary self-regulatory bodies may monitor the compliance of affiliated electronic service providers with the provisions of the Agreement and with relevant orders and directives. However, a voluntary self-regulatory body may only be approved if it meets the conditions set out in the Agreement. These refer, for example, to the independence and expertise of their appointed inspectors, the proper affiliation of a large number of providers and procedural rules governing the scope of the monitoring, the duty of broadcasters to submit their programmes for approval, and possible sanctions.

The *KJM* agreed to approve the *FSF* after the latter promised to amend several points in its application by 1 September 2003. These amendments concern the provision of a transparent, objective procedure for the appointment of *FSF* inspectors and the involvement of relevant social groups. The decision to approve the *FSF* remains valid for four years, subject to the appropriate conditions being met. ■

● ***KJM* press release of 24 June 2003, available at: http://www.alm.de/gem_stellen/presse_kjm/pm/240603.htm**

**DE**

## DK – Privatisation of the Danish National Broadcaster TV2

**Soren Sandfeld Jakobsen**
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Following a political agreement of June 2002 (see IRIS 2002-7: 9), the Danish Parliament, in May 2003, adopted an Act that establishes the legal basis for the impending privatisation of the national broadcaster *TV2*. *TV2* is one of two national public service broadcasters in Denmark, the other being *DR*. While *DR* is entirely financed through public funds, this is only partly the case for *TV2*, which is predominantly financed through advertisements and other commercial means.

According to the political agreement, the privatisation of *TV2* must be subject to a number of conditions. The privatised *TV2* must, *inter alia*, still abide by certain public service obligations. Moreover, the programme supply of the privatised entity must still aim at quality, versatility and diversity, and the programme planning must take into account the fundamental rights of freedom of information and speech.

Pursuant to the Act, the privatisation will legally be carried out in two steps: First, *TV2*, which is currently a public fund, will be converted into a private limited company with the Danish State as the only shareholder. This will be effected by transferring all of *TV2*'s assets and liabilities to a simultaneously founded private limited company. Second, the Act authorises the Minister of Culture to sell the State's shares in the private limited company to a third party. The sale must be submitted to the Danish Parliament for approval.

There is still an amount of preparatory political and legal-technical work to be completed before the privatisation of *TV2* can take place. Consequently, the Act does not stipulate a time frame for the privatisation. Instead, the Act authorises the Minister of Culture to determine the precise time of entry into force of the Act.

The decision to privatise *TV2* has been – and still is - subject to intense political and public debate in Denmark. Whether privatisation will lead to an enrichment or impoverishment of the Danish media remains to be seen. ■

● ***Lov om TV2/Danmark A/S – Lov nr. 438 af 10. juni 2003* (Act no. 438 of 10 June 2003 on TV2/Denmark A/S), available at: http://www.kum.dk/sw6295.asp**

**DK**

## FR – Heading for Reform of the Audiovisual Licence Fee?

**Amélie Blocman**
*Légipresse*

Each year the question of the audiovisual licence fee comes up for public debate. Although the Government at one time was considering abolishing this indirect tax which, together with advertising, constitutes the main source of income for the public audiovisual sector, it is currently looking into ways of improving its yield so as to increase the two billion euros it produces. The financial requirements of the public audiovisual sector in 2004 could in fact require an increase in the 3% allocation. The MP Patrice Martin-Lalande has been entrusted with a "mission of evaluation and control" (MEC) as a special rapporteur to the National Assembly's Finance Committee.

When he was being heard by the MEC, Marc Tessier, chairman and managing director of *France Télévision*, spoke out in favour of simplifying the licence fee, but wondered about the methods for its collection and more particularly on whether it was necessary to link it to the fact of a person owning a television set, which is the matter at the heart of the problem today. As things stand at present, a taxpayer pays just one licence fee for all the appliances he/she has at any one address, as long as they are used for private purposes.

For his part, the secretary general of the Ministry of the Economy, Finance and Industry referred to the need to change the tax itself, by combining it with the residence tax and using the records listing persons liable to that tax. He felt that it was important to "find a linking factor", and he noted that there was a relative similarity between residence and ownership of a television set, although this option was limited (some people do not own a television set). Moreover, the director of public accounting believes that the basis for assessment of the licence fee is "structurally inappropriate because of its technological limitation, as television will gradually be watched more frequently on a computer". It will therefore be necessary to be able to tax "the possibility of accessing the public audiovisual sector", whatever the medium used for such access. Two other limits also need to be taken into account – evasion of payment, currently estimated at 10% of the amount raised by the licence fee, and holiday homes, most of which are not currently liable to taxation and which could in theory bring in 300 million euros.

When he was heard on 10 June, Alain Seban, director of media development, spoke out in favour of a moderate increase in the licence fee (currently set at EUR 116.50 for a colour set and EUR 74.31 for a black and white set) and for maintaining the link with ownership of a television set. Returning to the possibility of using the records of those persons liable to residence tax for collection purposes, he felt this was a suitable way forward, and he indeed pointed to the possibility of cross-checking these records against those for pay television subscribers.

With all this in mind, the conclusions of the MEC are to be submitted to the Finance Committee on 25 June. ■

## GB – Official Report on Progress Towards Digital Switchover

**Tony Prosser**
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As required by section 33 of the Broadcasting Act 1996, the BBC and the Independent Television Commission (the regulator of commercial broadcasting) have published a report on progress towards digital switchover in the United Kingdom.

In 1999, the UK Government set criteria for the achievement of digital switchover (see IRIS 1999-9: 15). These were that:

- the 99.4% of the population able to receive analogue broadcasts should be able to receive them digitally;
- 95% of consumers must have access to digital equipment; and
- digital equipment must be affordable for the vast majority of people.

A "target window" for switchover of 2006-2010 was set on the basis that these targets could be achieved during this period.

The report found that good progress has been made towards meeting the criteria. Nearly all viewers could have access to digital by one or other platform (satellite, cable or terrestrial). About 40% of households had taken up digital, at least for their first set. There had been considerable uncertainty during 2002 due to the collapse of ITV Digital, but this has now been resolved with the launch of the free-to-air service, Freeview, operated by the BBC with significant input from BSkyB. Low cost set-top boxes are now available for digital terrestrial broadcasts, and the take-up figures for the new service have been encouraging. However, digital terrestrial broadcasts will only be available to about 80% of households, even after an aerial upgrade. The BBC also intends to broadcast in the clear on digital satellite, rather than using BSkyB's encryption service.

The take-up projections for digital ranged from 58% to 78% of households over the next five years. They suggest that it is unlikely that the criteria for switchover will be met in the early part of the target window. However, they may be met towards the end of it, near 2010. This is on the assumption that progress is achieved by the market alone; the report also suggests a number of actions the Government could take to assist, such as announcing a firm switchover date, requiring digital tuners to be included in new television sets, and making a public commitment to high levels of digital terrestrial coverage after switchover. Switchover could also take place on a rolling region-by-region basis.

The Secretary of State for Culture, Media and Sport welcomed the report and is examining the proposed government actions. A further report will be produced in 2004. ■

- **"A Report on Progress Towards Digital Switchover", Independent Television Commission and the BBC, April 2003, available at: http://www.digitaltelevision.gov.uk/pdfs/ITC_BBC_switchover_report.pdf**
- **"New Report Shows Good Progress Towards Digital Switchover", Department for Culture Media and Sport Press Release 41/03, 4 April 2003, available at: http://www.culture.gov.uk/global/press_notices/archive_2003/dcms41_2003.htm?properties=archive%5F2003%2C%2Fbroadcasting%2FQuickLinks%2Fpress%5Fnotices%2Fdefault%2C&month=**

## GB – Regulator Decides on Paranormal Programming

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The Independent Television Commission, the British regulator of the commercial broadcasting sector, has decided that two programmes shown by Living TV, a small cable and satellite channel, breached the Commission's Programme Code, mainly because they were not presented as entertainment.

In the programmes, mediums purported to make contact with the spirits of the dead and to pass messages to members of the studio audience. The Code (section 1.10) provides that demonstrations of exorcisms and occult practices are not acceptable in factual programming except in the context of a legitimate investigation. They should not in any event be shown before the 9pm "watershed", which marks the commencement of the hours when material not suitable for children may be shown. Other psychic practices such as horoscopes and palmistry could also only be shown as entertainment or in the context of legitimate investigation; they should not include specific advice to contributors or viewers about health, medical matters or personal finance. Nor should they be shown when large numbers of children are expected to be watching.

The Commission found that the programmes were not clearly presented as entertainment and did not acknowledge differing opinions on the true nature of purported contact with the spirits of the dead.

Nevertheless, the broadcaster could continue to show such programmes if announcements approved by the regulator were included before and after each of the programmes. The Commission will also revise the Code to clarify the nature of programmes covered and the scheduling restrictions required to protect children. ■

- **"ITC Rules on Paranormal Programmes on Living TV", Independent Television Commission News Release 35/03, 30 May 2003, available at: http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=710**
- **ITC Programme Code, available at: http://www.itc.org.uk/itc_publications/codes_guidance/programme_code/index.asp**

## GB – Regulator Publishes Guidance on Programme Commissioning from Independent Producers

The British Culture secretary had announced, at the beginning of 2003, that new Codes of Practice should govern the relations between the major broadcasters (including the BBC and the commercial broadcasters) and independent producers (see IRIS 2003-3: 12). The Independent Television Commission, which regulates commercial broadcasting, has now issued guidance on the content of the Codes. The Codes will be developed by the broadcasters themselves, and submitted by the end of July 2003; approval will rest with the new Office of Communications (Ofcom), which will take over the Commission's responsibilities later in the year when the Communications Bill, currently before Parliament, has become law. The Bill also sets out relevant principles for the Codes, and provides that all licences for public service channels shall require that such codes be in place.

The guidance states that the Codes should secure a clear and transparent process for commissioning: for example, setting out a broad timetable and responsibilities within the broadcaster for dealing with the process. They should describe how an adequate separation of responsibilities for programme commissioning from the management and operation of in-house production activities would be secured. The Codes should also define

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a minimum of primary rights that will be acquired from producers, the assumption being that the latter should retain rights in their programmes unless these are explicitly sold to the broadcaster. Primary rights should be defined as those necessary for a broadcaster to support its core schedules (for example first-run transmission plus a specified number of repeats) and to maintain and develop broadcasting across its core channels. Bundling of primary rights and other rights should not take place without agreement between both parties. Indicative tariffs for the acquisition of primary rights should be drawn up by each broadcaster. The Codes may contain proposals for development funding and cash flowing of productions, but these should not be made conditional on extended rights deals.

Monitoring of the applications of the Codes will be by Ofcom, though it will not be the final arbiter of disputes arising under them, independent arbitration being envisaged instead. ■

**● "ITC Publishes Guidance on Codes of Practice for Programme Commissioning from Independent Producers", Independent Television Commission News Release 37/03, 2 June 2003, available at:**
**http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=712**

**● Guidelines for Broadcasters in Drafting Codes of Practice for Commissioning Programmes from Independent Suppliers, Independent Television Commission, 30 May 2003, available at:**
**http://www.itc.org.uk/latest_news/press_releases/release.asp?release_id=712**

## GB – Offence to Public Feeling Justifies Refusal to Televise Election Broadcast

**David Goldberg**
*deeJgee*
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The Broadcasting Act 1990, Section 6(1)(a), imposes a duty on the Independent Television Commission to do all it can to secure that every service which it licenses complies with a requirement that "nothing is included in its programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling." The 1996 agreement between the BBC and the Secretary of State provides, in clause 5.1(d), that the Corporation shall do all it can to secure that all programmes which it broadcasts or transmits "do not include anything which offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling."

Several broadcasters (BBC, ITV, Channel 4 and Channel 5) had been presented with a tape for a party election broadcast by ProLife – a party that campaigned for the absolute respect for human life. The tape contained "prolonged and graphic" images of different forms of abortion.

Initially, the broadcasters declined to broadcast the tape; two revised versions were also turned down. Finally, ProLife's election broadcast was transmitted in the form of a blank screen accompanied by a soundtrack. The case turned on the exercise of their judgment by the broadcasters under Article 10(2) of the European Convention on Human Rights, in the context of a party election broadcast.

Overturning the Court of Appeal's decision in the case (see IRIS 2002-4: 7), the House of Lords held (by a majority) that the broadcasters had been entitled to refuse to broadcast the original (and revised) tape containing the images. To do otherwise would be to unjustifiably offend public feeling. Lord Hoffmann said: "[I]n my opinion…there is no public interest in exempting PEBs [Party Election Broadcasts] from the taste and decency requirements on the ground that their message requires them to broadcast offensive material." ■

**● Regina v. British Broadcasting Corporation ex parte Prolife Alliance, [2003] UKHL 23, on appeal from [2002] EWCA Civ 297, Judgment: 10 April 2003, Reasons: 15 May 2003, available at:**
**http://www.parliament.the-stationery-office.co.uk/pa/ld200203/ldjudgmt/jd030515/bbc-1.htm**

## GR – New Code of Conduct for News and Other Political Programmes

The Presidential Decree 77/2003, published on 28 March 2003, ratified a new code of conduct for news and other political programmes drafted by the National Council for Radio and Television (ESR). This code of conduct was drawn up in accordance with the procedure set out in Article 3(15) of Law 2328/1995. Under this Article, prior to the elaboration of codes of conduct, the National Council for Radio and Television must seek the opinion of the National Federation of the Reporters' Associations, as well as the opinion of the Advertising Agencies and advertisers' representative associations, of the public broadcaster (ERT-S.A.), of the private broadcasters and of the two associations most representative of local radio stations.

The new code of conduct applies to all radio and television broadcasts, both free-to-air and subscription services. It aims at the protection of individuals' rights and respect for public order, pluralism and democracy, within the framework of the Greek constitution (Article 15), which provides that audiovisual media must ensure quality demanded by the social role of radio and television and the cultural development of the country. It should be noted that the Greek constitution explicitly recognises citizens' constitutional right to information (Article 5A).

The new code of conduct regulates specific issues relating to the presentation of news bulletins, reporting on legal proceedings, the protection of the presumption of innocence of the accused, as well as the protection of minors, especially when children or adolescents are involved in criminal acts or accidents. Special concern is demonstrated for the protection of private life and of the rights of individuals who participate in radio and television programmes and talk shows. According to the new rules of conduct for news reports and political programmes, the broadcasting of information acquired through illegal telephone bugging, secret microphones or cameras is forbidden. It is also explicitly stipulated that the broadcasting media are bound to respect and not to transmit aggravating comments regarding the refusal of an individual to participate in a news programme.

News should be presented with due accuracy and impartiality. Events must not be confused with personal views expressed by journalists during a news or political programme. The broadcasting of breaking news must be restricted and take place after careful consideration. Special attention is given to the presentation of violence and the reporting of crimes, criminal techniques and terrorist acts. Such reporting must in no way encourage imitation. Also, it is explicitly laid down that reporters' inves-

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tigations must not be a substitute for police inquiries and interrogations. During the coverage of protests or party political events it is forbidden to use methods that encourage misleading the audience.

The above decree shall enter into force three months after its publication in the Official Journal, that is to say on 28 June 2003. ■

● **Decree No. 77/2003 "Code of conduct for news and other political programmes", Official Journal A, 28 March 2003**

**EL**

## LV – Amendments to the Radio and TV Law on the Table Again

On 15 May the *Saeima* (Parliament) of the Republic of Latvia again opened the discussion on the Law on Radio and Television.

The amendments put forward shall change the regulations on the National Broadcasting Council. As the existing law envisages, the National Broadcasting Council oversees both public and private broadcasters. The Council is an autonomous legal entity and operates independently of any Ministry – its 9 members are elected directly by the *Saeima*. Among other things it also manages the state capital shares of the public broadcasters – Latvia Television and Latvia Radio.

As to the amendments, the existing Broadcasting Council has to be released from its duties as regards public broadcasters and another council has to be formed – the Public Broadcasters' Supervising Council. The authority to be formed will not be autonomous; financing shall come directly from the budgets of Latvian Television and Latvian Radio. As the amendments furthermore envisage, the new Council will consist of 7 members – a member of the National Broadcasting Council, a member nominated by the President of the Republic of Latvia, a member nominated by the Cabinet of Ministers and 4 members nominated by at least 20 Members of the *Saeima*.

As the attempt to solve the problem of conflict of interests of the existing Broadcasting Council, which supervises the public broadcasters and at the same time manages the state capital shares and also regulates the private broadcasters, has been judged positively, the draft has been criticized in that the financing of the authority to be established will be an extra burden upon the already tight budgets of the public broadcasters in Latvia. Besides, there are plans to implement a mechanism to harmonize the decision-making process between the film industry, which is managed by the Ministry of Culture, and the broadcasting sector, which until now has been regulated by the National Broadcasting Council. ■

**Lelda Ozola**
*MEDIA Desk, Latvia*

● **Press release of the *Saeima*, available at: http://www.saeima.lv/pages/aktualitates.jsp?page=sedes-apskats**

**LV**

## LV – Constitutional Court Decides to Amend the Law on Radio and Television

On 6 June 2003, the Constitutional Court in Latvia published a decision abolishing the rule providing that no more than 25% of programming broadcast on electronic mass media may be in foreign languages. This decision, which cannot be appealed, has led to an amendment of the Law on Radio and Television. The Court affirmed that "the restrictions as regards the use of foreign languages envisaged by the said rule may not be considered as necessary and proportionate in a democratic society". The Court also stated that it would have been possible to achieve the aim of integration of society by other means less restrictive of the individual rights of people.

The legitimate aim of the rule has been to increase the influence of the Latvian language upon the cultural environment in Latvia and to speed up the integration of the society (bearing in mind that the population of Latvia comprises about 45% of non-Latvian-speaking people). However, despite implementing the rule, this aim has not been achieved. Due to the restriction on foreign language programmes, the inhabitants did not avail themselves of the services of local broadcasting companies, but chose the services of foreign broadcasters, mainly Russian TV channels, instead. Public opinion polls show that the audience rate of the Russian TV channels has grown considerably compared to the data of 1997 and 2000 – 3/4 of non-Latvian-speaking people regularly watch the Russian TV channels rebroadcast in Latvia. The rule regarding foreign language restriction also hindered the development of commercial broadcasting companies transmitting via terrestrial frequencies, as the restrictions did not at the same time apply to cable television stations, cable radio stations, satellite TV and radio stations or press publications.

So in its conceptual strategy document on the electronic mass media for the years 2003 – 2005 even the National Broadcasting Council of Latvia has indicated that restrictions on freedom of speech prevent the development of both radio and TV stations. ■

**Lelda Ozola**
*MEDIA Desk Latvia*

● **Press release of the Constitutional Court of Latvia, available at: http://159.148.59.99/LV/aktinf.htm**

**LV**

## RO – New Rules for TV Violence Warning Signs

Decision No. 57 of the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council – *CNA*), the regulatory authority for electronic media in Romania, published on 13 March 2003, tightens the regulations on the labelling of audiovisual productions in order to protect children and young people from violent content. In order to help parents and guardians decide what minors should watch, broadcasters are now obliged to provide the public with acoustic and visual warnings concerning programme content. The aim is to improve measures to prevent scenes of violence harming the moral, mental and physical development of minors.

The portrayal of smoking or alcohol consumption, vulgar language or sexual innuendo is therefore restricted in programmes aimed at minors. Ridiculing of physical disabilities is also banned. Furthermore, trailers for programmes containing scenes of violence, sex, vulgar language or other elements unsuitable for minors may not be broadcast between 6 am and 10 pm. TV news bulletins, reports and talk shows must not contain detailed descriptions of ways to commit suicide.

In the TV sector, licence-holders are responsible for

classifying TV productions according to the degree of risk to minors. The proposed criteria for the different categories are as follows:

a) the number and nature of violent scenes as well as their relevance to the content of the TV production concerned;

b) the use of violence to resolve problems and its role in relation to the content of the production;

c) the way in which the violent scenes are portrayed and staged, how realistic they are and whether or not they are accompanied by sinister, frightening music;

d) the number of nudity and sex scenes;

e) the psychology of the characters and the moral conclusions that might be transmitted to minors;

f) the typology, aims and propensity to violence of the main characters;

g) the presence and role of children in scenes of violence;

h) the portrayal of women in degrading situations;

i) the number and intensity of scenes of domestic violence;

j) the quality and typology of language;

k) the genre and theme of audiovisual productions.

On the basis of these criteria, the following six programme categories are suggested, according to the degree of risk to minors:

1.) those accessible to all viewer categories, requiring no restrictions or warning signs;

2.) those that may be seen by minors aged under 12 only with their parents' permission or in a family situation (relatively few violent scenes with low intensity, little nudity, few obscenities, etc.);

3.) those prohibited for minors under 12 (physical or psychological violence of medium intensity and duration, domestic violence and sex scenes, cruelty to people or animals, suicide scenes, drugs and alcohol consumption, antisocial behaviour that may be easily imitated, scenes in which children are abused or women are portrayed in degrading situations);

4.) those prohibited for minors under 16 (frequent, intensive scenes of physical or psychological violence, sex, detailed portrayals of criminal techniques, vulgar language, productions showing high levels of cruelty);

5.) those prohibited for minors under 18 (erotic films, horror films, sadistic scenes and other types of production that, for various reasons, are considered unsuitable for minors under 18 in the USA and other European countries);

6.) other productions prohibited for minors under 18 (pornographic films and TV programmes).

The type of productions mentioned in point 2 may not be broadcast immediately before or after programmes aimed at minors and must be marked with a visual warning sign consisting of a circle containing the letters "AP" (standing for "*acordul părinților*", parental consent) in white against a red background. The warning sign should measure 30 pixels and be shown for 5 minutes at the beginning of the broadcast and for 3 minutes after each commercial break. For productions that are not interrupted by advertisements, the warning sign must be shown for the first 5 minutes and then repeated at regular intervals during the broadcast for a further 10 minutes in total.

Similarly, the productions mentioned under point 3 should be marked with a circle containing the number 12, those under point 4 with the number 16, and those under point 5 with the number 18. Productions mentioned under point 6 may not be broadcast by TV companies operating under Romanian jurisdiction, not even in the form of so-called *rebroadcasting*.

If a programme falls into any of these categories, the broadcaster is also obliged to provide an acoustic and visual warning regarding its content before it is transmitted. The broadcaster must also include the relevant visual warning sign in TV programme listings. ■

**Mariana Stoican,**
*Radio Romania International*

● ***Decizia Nr. 57 din 13 martie 2003 privind protecția minorilor în cadrul serviciilor de programe* (National Audiovisual Council Decision No. 57 of 13 March 2003) available at: http://www.cna.ro/**

**RO**

## RO – Conclusions on "Reality Shows"

In a communiqué released on 15 May 2003, the Romanian *Consiliul Național al Audiovizualului* (National Audiovisual Council – *CNA)*, the regulatory authority for electronic media in Romania, published its conclusions on the recent monitoring of the "*Big Brother*" reality show currently being shown on the private-sector TV channel *Prima TV*. The *CNA* members concluded that this kind of programme promoted behaviour that could have a negative influence on viewers because it violated standards of morality.

The communiqué explained that *Big Brother*-type reality shows should also fulfil the requirements set out in Article 7 of the European Convention on Transfrontier Television, which stipulated that human dignity and fundamental human rights should be respected in television programmes. Consequently, family values and good morals should be upheld in accordance with the Romanian Audiovisual Act as well as European legislation. This was true irrespective of agreements signed between the TV producers and show participants. The regulatory authority therefore proposed the following measures for future episodes of the show: the producers should make a number of locations available to the occupants of the "*Big Brother* House" several times a day, where they would be unobserved. The *CNA* also recommended that the producers reverse the system of voting out individual participants so that votes were cast for rather than against the people concerned.

On account of previous breaches of human dignity and fundamental human rights in the *Big Brother* show, the *CNA* issued a public reprimand against the commercial broadcaster *Prima TV* on 16 May 2003. ■

**Mariana Stoican,**
*Radio Romania International*

● ***Recomandarea privind programele de tip "Big Brother"* (Conclusions of the *CNA*, 15 May 2003) and *CNA* press release of 16 May 2003 *(MTV România și Prima TV somate public de CNA)*, available at: www.cna.ro**

**RO**

## SE – Decision on Refusal to Broadcast Advertisement on Scientific Testing on Animals

In February this year, *Granskningsnämnden för radio och TV* (the Swedish Broadcasting Commission) had to decide whether the national commercial television channel TV4, could be blamed because of its refusal to broadcast a commercial concerning scientific testing on animals. The commercial was a parody of the well-known commercial for *L'oréal* with the slogan: "because I'm worth it". The testing was illustrated by a brief cartoon, in which a small animal had, for example, corrosive acid sprayed in his eyes. A beautiful real-life woman said ironically that she wanted to protect what were the most precious things for her: her skin and her hair. Therefore, she continued, over 35.000 animals in Europe must die in pain because of scientific testing on animals. The result, she declared, "is a more beautiful world for you and me". The following text appeared at the end of the commercial: "Most of the

cosmetic companies are testing on animals. Some do not. Read who is who on www.djurensratt.org [the internet web-site for the Association of Animal rights]".

According to Chapter 6 paragraph 5 of the *Radio och TV-lagen* (the Radio and Television Act - Act No.1996:844), advertising to win support for political or religious views, or views relating to special interests in the labour market sphere, is not allowed. According to the conditions of its broadcasting licence, TV4 is not allowed to discriminate between advertisers: they are to be treated equally.

TV4 refused to broadcast the commercial because of the prohibition on political advertising. The channel argued that broadcasting the commercial would constitute a breach of the Radio and Television Act. TV4 also argued that the purpose of the refusal was not to discriminate against the association as an advertiser.

The first issue to consider was whether TV4 had reason to believe that the commercial was a political advertisement, which the channel was obliged not to broadcast.

The Swedish Broadcasting Commission found that the marketing of certain products was only indirectly carried out through the reference to the list of products on the association's website. The main purpose of the commercial was to criticise scientific testing of cosmetic products upon animals. Its aim was therefore principally to arouse public opinion in favour of the association's views.

The Commission referred to the judgment by the European Court of Human Rights in the case of *VGT Verein gegen Tierfabriken* v. Switzerland (see IRIS 2001-7: 2). The circumstances of this case were that a television company had refused to broadcast a commercial concerning animal welfare submitted by the *Verein gegen Tierfabriken* (Association against industrial animal production – *VGT*). The commercial was considered to be a response to the advertisements of the meat industry and ended with the words "eat less meat, for the sake of your health, the animals and the environment." The court's conclusion was that the refusal to broadcast *VGT*'s commercial could not be considered as necessary in a democratic society and that consequently there had been a violation of Article 10 of the European Convention (freedom of speech).

When dealing with the question of whether TV4 should be criticised for its refusal to broadcast the commercial, the Commission held that, in light of the case-law of the European Court of Human Rights, there was uncertainty as to whether the commercial could be seen as a prohibited political advertisement. Since the commercial had not been broadcast and as the Commission, due to the ban on censorship, is not allowed to monitor programmes that have not been broadcast, the Commission could not take a definite position on this point. However the Commission held that nothing had occurred which implied that TV4 intended to discriminate against the advertiser. Thus, TV4 had not violated the prohibition to discriminate between advertisers. ■

**Sabina Martelleur**
*Legal Adviser*
*Swedish Broadcasting Commission*

**● Decision of the Swedish Broadcasting Commission, of 19 February 2003, SB 117/03, available at:**
**http://www.grn.se/PDF-filer/Namndbes/2003/sb117-03.pdf**
**SV**

# FILM

## CH – Audiovisual Pact Renewed for Three Years

Concluded for the first time in 1996, the Audiovisual Pact has been renewed for a further three years from 1 January 2003. The Audiovisual Pact is an agreement among the Swiss radio and television company *SRG SSR idée suisse* and six partners in the Swiss cinematographic branch, namely the *Association suisse des producteurs de films* (Swiss association of film producers – SFP), the *Association suisse des réalisatrices et réalisateurs de films* (Swiss association of film directors – ARF), the *Groupement suisse du film d'animation* (Swiss animated film grouping – GSFA), the *Association Romande du Cinéma* (French-speaking Swiss cinema association – ARC), *Producteurs suisses film et vidéo* (Swiss film and video producers – SFVP) and the *Groupe Auteurs, Réalisateurs, Producteurs* (writers', directors' and producers' group – GARP).

The aim of the Audiovisual Pact for 2003-2005 signed in Locarno on 5 August 2002, which has a total budget of CHF 50.4 million for the three years it will remain in force, is to promote the independent production of projects for cinema and television, and the showing of Swiss films on the television channels of *SRG SSR idée suisse*. The agreement is based on flexible collaboration among the partners concerned and its purpose is to improve the possibilities of self-financing for independent Swiss production and access to Swiss and European audiovisual support funds. Moreover, the signatories of the Audiovisual Pact are calling on the Federal Assembly (the Swiss parliament) to increase significantly the public funds allocated in favour of independent production.

The annual contribution of *SRG SSR idée suisse* amounts to CHF 16.8 million, an increase of CHF 300 000 compared with the sum for the previous Audiovisual Pact 2000. This additional amount is intended for animated films which until now did not receive any support from the agreement. The balance available is to be divided among cinematographic production (CHF 6 million), the production of films for television (CHF 7.4 million) and the "broadcasting success" (*"succès passage antenne"*) bonus (CHF 3.1 million). The aim of this bonus is to have more Swiss films shown on the television channels of *SRG SSR idée suisse* and to ensure a degree of continuity in production. The bonus must be re-invested in projects for the cinema or television.

The sums invested by *SRG SSR idée suisse* under the Audiovisual Pact are allocated on the basis of co-production contracts concluded with independent Swiss producers. The contracts are signed in the name of *SRG SSR idée suisse* by its TV enterprise units, namely *Schweizer Fernsehen* (DRS), *Télévision Suisse Romande* (TSR), *Radiotelevisione svizzera di lingua italiana* (RTSI) and *Radio e Televisiun Rumantscha* (RTR). The projects submitted by the producers must be of a certain quality, attractive and economically viable in terms of market conditions. In exchange for its financial contribution, *SRG SSR idée suisse* acquires the corresponding television rights in Switzerland and Liechtenstein for a period of fifteen years starting on the date of the first showing of the films it co-produces. ■

**Patrice Aubry**
*Lawyer (Geneva)*

**● Audiovisual Pact for 2003-2005 – agreement concluded among *SRG SSR idée suisse* and the body of independent producers**
**FR**

# RELATED FIELDS OF LAW

## AL – Amendments to Copyright Legislation

On 15 May 2003 the Government of the Republic of Albania passed a draft law in order to strengthen the protection of copyrights relating to electronic media in Albania. The draft contains amendments to the Law No. 8410 of 30 September 1998 "On public and private radio and television in the Republic of Albania".

At present, the issue of copyright relating to the electronic media in Albania has not been resolved satisfactory. The only clause in the above-mentioned Law states that in the case of a dispute regarding copyright, the opposing parties may take legal action. Having monitored three years of experience of the clause in the question of private radio and television, some structural weakness could be outlined regarding the protection of electronic media against piracy.

The new amendments intend to clarify the rules for prevention from piracy and to establish stronger sanctions. Sanctions may range even to suspension of the licence of an operator who does not respect the copyrights. Imposing such sanctions shall be within the competence of the *Keshilli Kombetar i Radiotelevizioneve* (National Council of the Radio and Television), the state authority licensing and monitoring the activity of the electronic media in Albania. In addition, radio and television stations shall be obliged to conclude official agreements with their partners, in the case of re-broadcasting programs that are not their own productions. ■

**Hamdi Jupe**
*Albanian Parliament*

● **Draft-law of the Albanian Government "On copyrights" of 15 May 2003**

**SQ**

## AL – Lack of Social Security for Journalists

On 15 May 2003, the Standing Parliamentary Committee on Means of Public Information of the Albanian Parliament expressed its deep concern about the situation regarding the social security of the Albanian journalists and other media employees. Most of them are working illegally due to media owners not paying towards their social security, as stipulated in the Law No. 7703 of 11 May 1993 "On social insurance in the Republic of Albania".

In a letter of the Minister of Labor and Social Issues sent to the Parliamentary Committee on 30 April 2003, the Minister expressed her worries about this problem. According to the letter, private Albanian newspapers, radios and televisions are mostly declaring only a part of the numbers of journalists and other media employees to the State Institute for Social Insurance, which is responsible for this issue.

During 2002, the National Labor Inspectorate, the state authority responsible for veryifying and controlling the process regarding the contributions towards social insurance of the workers in Albania, has imposed penalties of EUR 2500 on private radio and televisions stations. To improve the incentive to pay, the Parliamentary Committee has asked the *Keshilli Kombetar i Radiotelevizioneve* (The National Council of Radio and Television) to pay attention to this problem during the process of licensing and re-licensing of the private radio and television in the future. ■

**Hamdi Jupe**
*Albanian Parliament*

● **Law No. 7703 of 11. May 1993 "On social insurance in the Republic of Albania"**
● **Letter of the Minister of the Labor and Social Issues sent to the Parliamentary Committee on 30 April 2003**

**SQ**

## DE – Admissibility of Automated Rental of Pornographic Videos

In a ruling issued on 22 May 2003 (case no. 1 StR 70/03), the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) decided on the admissibility under criminal law of renting out pornographic videos using automated video libraries.

The defendants run an automated video library in the form of a club. Around 30% of the videos available for rental contain pornographic material. The video dispensing machine is located in business premises which are not staffed and to which access is restricted. People wishing to rent videos must fill out a written application form. Using this form and the applicant's identity card, the video club operators check that the customer has reached the age of majority. Provided this is the case, the customer can buy a smart card, which enables them to gain access to the premises, and a PIN. Their thumb-print is also scanned and stored. Customers can only view the list of videos available on the screen and rent them out if they insert their smart card, type in their PIN and if their thumb-print matches. The room is also monitored by a video surveillance camera.

The video club operators were accused of breaching the *Strafgesetzbuch* (Criminal Code - *StGB*) and the *Gesetz zum Schutz der Jugend in der Öffentlichkeit* (Act on the Protection of Minors in Public), which has now been replaced by the new *Jugendschutzgesetz* (Youth Protection Act - *JSchG*, see IRIS 2002–6: 13). The *BGH* concluded that staff did not necessarily have to be present as long as the technical security measures in place were reliable and offered a comparable level of youth protection and age verification. This was particularly true in the light of the amended youth protection legislation, which entered into force on 1 April 2003. When the relevant Article 184 para. 1 no. 3 (a) of the *StGB* had been introduced in 1985, the legislator had assumed that minors could only be prevented from renting prohibited material from a video library if staff were in attendance. However, since technical progress meant that this was no longer the case, a reassessment was necessary. In conclusion, the *BGH* decided that the rental of pornographic videos using the system operated by the defendants was admissible under criminal law.

According to the aforementioned review of youth protection legislation, pre-recorded videos which have no age restrictions or which are classified as suitable for persons over 6, 12 or 16 years old under the terms of Article 6 para. 2 nos. 1 to 4 of the *JSchG*, may be made available from automated libraries outside of business premises as long as technical precautions are taken to ensure that they cannot be accessed by children and juveniles below the age for which they are suitable (Art. 12 para. 4 *JSchG*). ■

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

● ***BGH* press release of 22 May 2003, available at: http://www.bundesgerichtshof.de/**

**DE**

## FI – New Legislation on the Communications Market

On 23 May 2003, a package of new acts relating to legislation on the communications market was ratified. The changes included the *Viestintämarkkinalaki* (Communications Market Act), the *Laki televisio- ja radiotoiminnasta annetun lain muuttamisesta* (Act on the amendment of the Act on Television and Radio Operations), the *Laki valtion televisio- ja radiorahastosta annetun lain muuttamisesta* (Act on the amendment of the Act on the State Television and Radio Fund) and the *Laki Yleisradio Oy:stä annetun lain muuttamisesta* (Act on the amend-

ment of the Act on the Finnish Broadcasting Company). Technical changes were also made to, *inter alia*, the *Laki viestintähallinnosta* (Act on Communications Administration), the *Radiolaki* (Radio Act), the *Tekijänoikeuslaki* (Copyright Act) and the *Laki yksityisyyden suojasta televiestinnässä ja teletoiminnan tietoturvasta* (Act on the Protection of Privacy and Data Security in Telecommunications). The acts will enter into force on 25 July 2003.

The changes represent the second phase of the reform of legislation relating to the communications market in Finland (for a report of the first phase of the reform see IRIS 2002-7: 10). By means of these changes the EU regulatory framework for all electronic communications is implemented into Finnish legislation and the legislation on the communications market is brought to a level that corresponds to the requirements of the new Constitution.

The most important changes that directly affect the audiovisual sector are described below.

The must carry rules that apply to telecommunications companies which supply network services in cable television networks were altered and transferred from the Act on Television and Radio Operations to the Communications Market Act. As of 25 July 2003, cable operators are obliged to distribute without charge the public service programmes of the Finnish Broadcasting Company YLE, including special and additional services (special services refer to, for example, services for disabled persons and additional services to, for example, additional programme-related information and superteletext). Cable operators are also obliged to distribute without charge the television and radio channels provided on the basis of national programme operating licences including information, advertising and services relating to the programming. The above applies unless it would require expensive improvements to the network (e.g. digitalisation). Free-to-air programming must be provided to households without charge (except for a reasonable fee for maintenance of the network). Programmes and services shall be distributed unchanged and simultaneously with the original transmission. This means, for instance, that a cable operator is prohibited from changing a digital signal to an analogue transmission.

Changes in the Act on Television and Radio Operations include the following:

- The Act does not apply to networks with fewer than 2000 connections (previously 250); the Finnish Communications Regulatory Authority (FICORA) shall grant short-term or small-scale programme operating licences.
- Regular programme operations must be launched within six months after an operating licence has come into force.
- In connection with events of major importance for society, a substantial proportion of the public means 90%. The list of these events, if required, is decided by the Government, and if television companies cannot between themselves resolve how unused exclusive transmission rights to these events are to be transferred to another company, then FICORA can be asked to decide the amount of the remuneration.

Changes in the Act on YLE include that YLE's Administrative Council (elected by Parliament) shall each year submit a report on the company's activity to Parliament. Also, YLE's operative management shall each year submit a report on the company's public services during the past year to FICORA. FICORA shall give a statement about this report to the Government. ■

**Marina Österlund-Karinkanta**
*Finnish Broadcasting Company YLE, EU and Media Unit*

**● Acts No. 393/2003, 394/2003, 395/2003, 396/2003, 397/2003, 399/2003, 398/2003 and 401/2003 of 23 May 2003, available at: http://www.finlex.fi/**

**FI-SV**

## FR – CSA Delivers its Opinion on the Draft Electronic Communications Bill

On 28 May the CSA delivered its opinion on the draft electronic communications bill (see IRIS 2003-5: 15 and IRIS 2003-6: 9), the purpose of which is to transpose the "telecoms package" into French law. The opinion is in eight sections which, on the whole, follow the order of the text, and cover the amendments made to the Post and Telecommunications Code, the scope of the CSA, authorisations for terrestrially broadcast television, the status of TDF (*Télédiffusion de France*), radio and television services other than those broadcast terrestrially, service distributors, measures to combat concentration, and the exercise of regulation.

Firstly, the CSA calls on the Government not to extend the acknowledged scope of the *Autorité de régulation des télécommunications* (telecoms authorisation authority – ART) as regards the operators of networks or electronic communications services to include commercial editors and distributors of radio or television services, over which the CSA has authority.

With regard to its area of authority, the CSA stresses the need for a definition of radio and television services and for the regulation of those services with partially interactive content. The draft bill usefully supplements the provisions of the bill on confidence in the digital economy, voted in April on its first reading in the National Assembly, which defines public on-line communication services as a sub-group of audiovisual communication services. Thus there is now a clear statement on the scope of the regulation exercised by the CSA over the sub-group of audiovisual communication services constituted by radio and television services, whatever their means of transmission and distribution. Nevertheless, with an eye to clarity and legal security, the CSA repeats the desire it has expressed on many occasions for the legislator to give a definition of radio and television services, and proposes one in its opinion.

The CSA also approves all the proposed provisions designed to reduce the time taken to investigate applications from candidates and improve the investigation procedures prior to the issue of authorisations. It stresses the need to draw a clearer distinction between the legal frameworks for local cable channels and for local public terrestrially broadcast television channels.

As for the thresholds to combat concentration, the CSA is asking that whenever possible, thresholds expressed in absolute terms should be replaced by thresholds expressed as relative values, as these are easier to adapt subsequently. Moreover, the CSA feels it would be appropriate to embark on consideration of arrangements which, instead of automatically limiting development of the activity of powerful operators, would give it the power to impose specific obligations on them in order to guarantee diversity while promoting the industrial development of the sector. The CSA also proposes three measures to facilitate the application of Article 40 of the 1986 Act, which sets at 20% the maximum holding of persons who are not Community nationals. It is also in favour of the abolition of the threshold of 8 million inhabitants for cable operators.

Lastly, the CSA welcomes the fact that the draft bill extends to the entire audiovisual sector its power to settle disputes, limited by the Act of 1 August 2000 to terrestrially broadcast digital television. It would nevertheless like the scope of its power of sanction to be

**Amélie Blocman**
*Légipresse*

extended, particularly as regards access to pornographic or extremely violent broadcasts. It concludes its opinion by setting out three proposals for other changes to be made to its powers (reinforcement of its power of investigation, attribution of a regulatory power in respect of the technical conditions for using audiovisual frequencies, and definition of its scope for exercising supervision of broadcast advertising).

Having made a number of amendments based on the opinion and on that of the ART, delivered on 12 June, the Government is now on the point of transmitting the final version of the bill to the Conseil d'État. It would however appear that it is maintaining, against the CSA's opinion, its choice to not define radio and television. ■

● **Opinion of the CSA on the electronic communications bill, available at: http://www.csa.fr/infos/textes/textes_detail.php?id=12700**

**FR**

## GB – Protection of Sources Is Declared a "Basic Condition" for Freedom of the Press

**David Goldberg**
*deeJgee Research/Consultancy*

The case involved the disclosure of information contained in confidential health records, which had been obtained by an investigative journalist. On the facts of the particular case, which were distinguishable from an earlier House of Lords decision in 2002 (Ashworth Hospital Authority v. MGN Ltd), the Court of Appeal quashed a summary order for source disclosure against the journalist. Lord Justice May said: "[P]rotection of journalistic sources is one of the basic conditions for press freedom in a democratic society. An order for source disclosure cannot be compatible with Article 10 of the European Convention unless it is justified by an overriding requirement in the public interest. Although there is a clear public interest in preserving the confidentiality of medical records, that alone cannot, in my view, be automatically regarded as an overriding requirement without examining the facts of a particular case." ■

● **Robin Ackroyd v. Mersey Care NHS Trust, [2003] EWCA Civ 663, 16 May 2003, available at: http://www.bailii.org/ew/cases/EWCA/Civ/2003/663.html**

**EN**

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12, rue de Lübeck - 75784 Paris cedex 16
Tel. : (+33) 01 44 34 37 05

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## AGENDA

**Journée de la communication 2003 / Kommunikationsrechtstagung 2003**
14 October 2003
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