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EDITORIAL

## Workshop on fiscal and labour law in the audiovisual sector

One of the main objectives of the European Audiovisual Observatory is to promote transparency in rules and policies that relate to the audiovisual sector. Currently, the Observatory is preparing a working session on fiscal and labour law issues that affect the audiovisual industry. A preparatory meeting will take place in Strasbourg on 6 November 1995 and a subsequent session which will take place early 1996.

The aim is to bring together producers, journalists, lawyers, consultants and policy makers and others to discuss together the fiscal and labour law matters that affect those who work in an international environment of audiovisual production and distribution. The Observatory would like to hear what problems are encountered in these fields of law by those who produce and distribute regularly audiovisual information and products at the international level. The Observatory is especially interested in identifying their information needs: what type of legal information should be made available in order to meet these needs?

Other international organisations will be invited so that they may consider what they could do to facilitate the work of the audiovisual industry.

In preparation of the 1996 meeting, the Observatory will commission studies to identify initially the fiscal and labour law information needs of the audiovisual sector. In addition, however, your help is needed. I would like to invite you to contact me, preferably in writing, in the case where you have any suggestions or ideas on what should be discussed in this framework or if you would like to have additional information. The results of this work will be reported and published during 1996.

I very much look forward to hearing from you.

Ad van Loon  
IRIS Co-ordinator

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## The global Information Society

### European Commission: Communication on the promotion of the European multimedia industry

On 30 June 1995, the European Commission presented a Communication to the Council and the European Parliament in which it sets out a programme to stimulate the development of a European multimedia content industry and to encourage the use of multimedia content in the emerging information society. The programme would run from 1996 through 1999 at the cost of approximately ECU 100 million.

The activities of the content industry are considered to be creation, development and packaging and distribution of content-based products and services. The content industry, according to the Commission, is composed of the print publishing, electronic publishing and audiovisual industries. The objective of the programme is to establish an integrated policy approach at the European level by creating the pre-conditions for a thriving content industry, identified in the Communication as the liberalisation of telecommunications networks and services, the adoption of a clear and stable regulatory framework, particularly in relation to intellectual property rights and privacy protection, and the promotion of research and technological development on applications of public interest.

In total, the Communication identifies 11 actions to trigger the European multimedia potential, amongst which projects to catalyse high quality European multimedia content, to observe and analyse the multimedia content market, to spread the use of multimedia content standards, to encourage skills development at European level and a project to trade multimedia intellectual property rights.

In regard to the latter, the Commission announces that it intends to launch a call for proposals for pilot projects that lay down the foundations for cross-border trading of multimedia rights electronically. Studies will be launched to determine how different intellectual property rights trading systems for multimedia in Europe can work together. In the longer term, the Commission reckons that harmonisation and rationalisation of legal requirements may be necessary.

It is now up to the European Council to adopt a formal decision to implement the proposed programme.

**Communication from the Commission to the Council and the European Parliament of 30 June 1995 concerning a multi-annual Community programme "INFO 2000", COM(95) 149 final. Available in English and French at the Observatory.**

### USA: Report on the impact of the Information Superhighway on copyright

On 5 September 1995, the US Department of Commerce published a report on the impact of Government proposals on a National Information Infrastructure (the Information Superhighway) on current US copyright laws.

The report was prepared by the Working Group on Intellectual Property Rights which was established within the Information Policy Committee to examine the intellectual property implications of the National Information Infrastructure and make recommendations on any appropriate changes to U.S. intellectual property law and policy.

The approach of the report is to discuss the application of the existing copyright law and to recommend only those changes that the Working Group considers to be essential to adapt the law to the needs of the global information society. By providing a generalized legal framework, based on the extensive analysis and discussion of the way in which the law has been and, according to the Working Group, should be interpreted. The report stipulates that an effective intellectual property regime must (1) ensure that users have access to the broadest feasible variety of works by (2) recognizing the legitimate rights and commercial expectations of persons and entities whose works are used in the National Information Infrastructure environment. Intellectual Property and the National Information Infrastructure. Report of the Working Group on Intellectual Property Rights of the Information Infrastructure Task Force, 5 September 1995.

Single copies of this Report may be obtained, free of charge, by sending a written request to: "Intellectual Property and the NII", c/o Terri A. Southwick, Attorney-Advisor Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, D.C. 20231.

Copies are also available from the IITF Bulletin Board. The Bulletin Board can be accessed through the Internet by pointing the Gopher Client to [iitf.doc.gov](http://iitf.doc.gov) or by telnet to [iitf.doc.gov](telnet://iitf.doc.gov) (log in as *gopher*). The Bulletin Board is also accessible at +1 202 5011920 using a personal computer and a modem. Furthermore, the document is available on the WWW server of the U.S. Patent and Trademark Office, at <http://www.uspto.gov> and finally, for those who are unable to get the document through any of these means, it is available in English at the Observatory.



## THE NETHERLANDS: Scientology raises question of status Internet service providers

A recent move by the Church of Scientology to impound computer servers operated by Dutch Internet access provider XS4ALL ('access for all') has sent shockwaves through the Internet community. Several XS4ALL subscribers had posted a legal document (the so-called *Fishman affidavit*) on their WWW home pages, containing copyrighted Scientology information. According to the Church, this amounted to copyright infringement for which XS4ALL was to be held liable. Scientology's action raises crucial questions as to the liability and legal status of Internet service providers. Should a service provider be equated with a publisher and held responsible for all content passing through the net, or should it be treated as a telecom operator and given common carrier status? The Court of Amsterdam will eventually have to decide.

(Bernt Hugenholtz,  
Institute for Information Law / STIBBE SIMONT MONAHAN DUHOT Attorneys)

## Council of Europe

### Training workshop on practical measures against sound and audiovisual piracy

The Council of Europe's Steering Committee on the Mass Media (CDMM) organised a training workshop on practical measures against sound and audiovisual piracy in Strasbourg on 13-15 September 1995.

There were about 100 participants. The workshop was primarily intended for professionals directly involved in the fight against activities such as the illegal reproduction and marketing of videocassettes, compact disks and decoders, the distribution of films without the copyright-holders' consent and the illegal reception of television programmes.

The various points were covered at five plenary training sessions on: (1) the typology and identification of pirated products; (2) technical means of protecting works and other ways of helping to prevent their being unlawfully reproduced, received and shown for commercial purposes; (3) legal and tax aspects of the fight against piracy; (4) the setting-up and management of pluridisciplinary professional bodies to combat piracy; (5) ways of making the public more aware of the damage done by piracy.

Each session was chaired by a trainer specialising in the question dealt with, backed by a panel representing the various sectors concerned (records, cassettes, films, decoders). The trainers/panel members were: Mr. Martin Boulton (International Video Federation, IVF), Mr. Carter Elzroth (Association of Commercial Televisions in Europe, ACT), Mr. Gilbert Grégoire (International Federation of Film Distributors' Associations, FIAD), Mr. Tim Kuik (Motion Picture Export Association of America, MPEAA), Mr. Martin Schaeffer and Mrs. Funkazi Koroye-Crooks (International Federation of the Phonographic Industry, IFPI).

At the end of the workshop, the participants adopted a declaration in which they hoped that the Council of Europe would continue to monitor developments in this area closely. They also requested that the texts of Recommendation No. R(95)1 on measures against sound and audiovisual piracy (adopted by the Committee of Ministers on 13 January 1995; see: IRIS 1995-1: 4) and the illustrated vademecum on the fight against sound and audiovisual piracy (prepared by the CDMM) be widely distributed. These two publications are available from the Council of Europe Press in French and English. Versions of the vademecum in Italian and in several central and east European languages are also in the pipeline.

Council of Europe Press/Les éditions du Conseil de l'Europe, Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex.

(Alfonso de Salas,  
Council of Europe, Directorate of Human Rights, Media Section)



## European Union

European Parliament: Recent Resolutions that are now available at the Observatory in English, French and German

Decision on the common position established by the Council with a view to the adoption of a European Parliament and Council Directive on the use of standards for the transmission of television signals (C4-0032/95 - 00/0476 (COD)), Minutes of the Sitting of 13 June 1995, Provisional Edition, PE 192.034: 10-16 (see also: IRIS 1995-8: 5).

European Parliament, Resolution concerning the draft Commission directive amending Commission Directive 90/388/EEC regarding the abolition of the restrictions on the use of cable television networks for the provision of telecommunications services (C4-0120/95), Minutes of the Sitting of 15 June 1995, Provisional Edition, PE 192.036: 32-36 (see: IRIS 1995-7: 4).

Resolution on pluralism and media concentration, Minutes of the Sitting of 15 June 1995, Provisional Edition, PE 192.036: 69 (see: IRIS 1995-7: 3).

Resolution on the Green Paper 'Strategy options to strengthen the European Programme Industry in the context of the audiovisual policy of the European Union' (COM(94) 0096 - C3-0222/94), Minutes of the Sitting of 14 July 1995, Provisional Edition, PE 192.561: 22-27 (see: IRIS 1995-8: 6).

European Commission: Prohibition of joint venture between Nordic satellite companies

On 19 July, the European Commission decided that a planned joint venture between Norsk Telekom (Norway), Tele Danmark (Denmark) and Kinnevik (Sweden) under the name of Nordic Satellite Distribution could not be approved under Council Regulation (EEC) Nr 4064/89 on the control of concentrations between undertakings.

After an investigation, the Commission came to the conclusion that the joint venture would achieve a dominant position in the market for satellite TV transponder capacity in Denmark, Norway, Sweden and Finland; in the market cable TV network operation in Denmark; and in the market for the distribution of pay TV services throughout the region.

**Decision of the European Commission in the case of Nordic Satellite Distribution (NSD), 19 July 1995. Not yet published. Will be made available through the Observatory.**

European Commission: Dutch TV joint venture cannot be cleared in its current form

On the proposal of Karel van Miert, the Commissioner responsible for competition policy, the Commission decided that in its current form, the Dutch TV joint venture Holland Media Groep S.A. (HMG) cannot be approved under Council Regulation (EEC) Nr 4064/89 on the control of concentrations between undertakings. The present decision does not prevent HMG from continuing its activities. The measures needed to restore effective competition on the Dutch TV advertising and production markets will be adopted at a later date. In the meantime, the parties have been invited by the Commission to propose appropriate measures to this effect within three months.

HMG is a joint venture between RTL4 SA (RTL), Veronica and Endemol Entertainment. The parent companies of RTL are the Luxembourg broadcasting group CLT and the Dutch publishing group VNU. RTL has transferred its broadcasting activities in the Netherlands - the two private commercial TV channels RTL4 and RTL5 - to HMG. A third channel has been brought into HMG by Veronica, formerly a private association operating in the public broadcasting system of the Netherlands, which became a fully-fledged private commercial broadcasting channel on 1 September 1995. The other main parent, Endemol, is the largest independent producer of TV programmes in the Netherlands.

Following a detailed inquiry, the Commission has concluded that the HMG joint venture will lead to the creation of a dominant position on the Dutch market for TV advertising and will strengthen Endemol's already existing dominant position on the Dutch TV production market.

The Commission's examination of this concentrative joint venture was based on a request made by the Dutch Government to this effect, in the absence of which the Commission would have had no jurisdiction to deal with the case, for the reason that the required turnover thresholds set out in the Concentration Regulation were not attained by the parties concerned. Where the thresholds are not attained, jurisdiction rests with the Member States of the European Union. However, a Member State is entitled under Article 22 of the Regulation (the so-called *Dutch Clause*) to request the Commission to take up the case and to examine it. In the absence of a legal basis for concentration control at the national level, the Government of the Netherlands used this "U-turn construction" to apply concentration control to HMG.

**Decision of the European Commission in Case Nr IV/M.533-Holland Media Groep (HMG), 20 September 1995. Not yet published. Will be made available through the Observatory.**



European Commission: Regulations on order of priority for access to cable networks under scrutiny

The European Commission is at present considering complaints concerning the way in which several German *Länder* regulate the order in which programmes are given access to cable channels in their media legislation. It is considering whether these regulations are compatible with Article 59 of the EC Treaty (the freedom of movement of services).

Under the broadcasting agreement between the *Länder*, as it stood at 1 August 1994, the order in which programmes are given access to cable channels is a matter for the *Länder*. In their laws or regulations on cable channel access, these normally specify the following order:

Category 1: privileged programmes (programmes specified in law / programmes licensed in the *Land* concerned; Category 2: programmes normally received in the area; Category 3: programmes which can be received in the area; Category 4: specially brought in programmes, satellite programmes.

The last category usually includes both domestic and foreign programmes.

The Commission has doubts concerning the compatibility with Article 59 of the EC Treaty of regulations which, whenever problems of capacity arise with cable networks, give domestic programmes preference over programmes from other EU Member States, regardless of the legal selection criteria which must otherwise be followed (e.g. programme choice, acceptability to viewers, etc.), or which, for local political reasons, give preference to satellite programmes licensed in the *Land* concerned, regardless of the ranking criteria otherwise applied to programmes specially brought in.

The rules on priority which it sees as raising problems are those contained in the *Land* Media Act of Mecklenburg-Vorpommern, the Private Broadcasting Act of Hesse and the *Land* Media Act of Northrhine-Westphalia.

The Commission takes the view that both the priority given to domestic programmes (Section 42, Sub-section 1 of the Mecklenburg-Vorpommern Act, Section 42, Sub-section 1 (5), third sentence, of the Hesse Act) and the priority given to satellite programmes licensed in the *Land* (Section 41, Sub-section 1 of the Northrhine-Westphalia Act, as modified by the 7th amending act) may constitute a restriction on the freedom of movement of services in respect of dissemination on cable networks covered by these laws of programmes produced by broadcasters operating in other Member States.

As the Commission considers this issue, it will be interesting to see how access privileges - which have also developed against the background of earlier rulings by the German Federal Constitutional Court - are reconciled with the Court of Justice of the EC's case-law on unjustified restrictions on the freedom of movement of services (cf. Court of Justice of the EWC, Vol. 1974, p. 1299, "Van Binsbergen"; Court of Justice of the EC, Vol. 1988, p. 3755 "Insurance"). If these privileges are to count as discriminatory restrictions within the meaning of Article 59 of the EC Treaty, then there will have to be overriding reasons relating to the general interest, such as the protection of diversity, regarded as essential for the formation of public opinion in the Federal Republic, to justify them.

Letter from the European Commission (DG XV) to the Permanent Representative of the Federal Republic of Germany at the European Union, 28 June 1995. Available in German from the Observatory. The letter was published in the German monthly magazine INFOSAT 10/95, No 91: 66-69.

(Sabine Astheimer,  
*Südwestfunk* - SWF)

## National

### CASE LAW

**FRANCE:** The representation of works of a painter during a television programme was not a short quotation within the meaning of the Intellectual Property Code

In a judgement of 4 July 1995, the Court of Cassation held that the showing of the entire works of a painter during a television programme did not constitute a short quotation within the meaning of the Intellectual Property Code.

In this particular case, the television company, Antenne 2, showed a programme on 29 November 1988 devoted to topical events in the theatre, during which, in connection with a play being performed at the *Théâtre des Champs-Élysées*, the mural paintings of Edouard Vuillard in the smokers' bar were shown. On 16 November 1988 the theatre had inaugurated the re-hanging of the panels painted by Vuillard, which had been stolen in 1986. During the programme, more than an hour long, the camera, which travelled throughout the entire theatre to show the quality of restoration work, stopped for 49 seconds on the rediscovered works of Vuillard.

Acting on behalf of the beneficiaries of the painter, who died in 1940, the SPADEM (*Société des auteurs des arts visuels*- Society of authors of the visual arts), considering that these works had been shown without prior authorisation, requested damages. The Court of First Instance dismissed the SPADEM on the grounds that the showing of artistic works, such as paintings or sculptures, came within the scope of the right of quotation. In its decision of 7 July 1992, the Court of Appeal of Paris reversed the decision, holding that the "showing of the litigious frescoes of Vuillard may not be analysed in this particular case as a short quotation".

The Court of Cassation approved the decision of the Court of Appeal and rejected the appeal lodged by Antenne 2, refusing to retain as a criterion the fleeting nature of the showing of the works, the speed of vision, in order on the contrary to take into account that the works of the painter had been shown in their entirety and that such a representation could not constitute a short quotation within the meaning of article L. 122-5 of the Intellectual Property Code. The same solution had been adopted by the first Civil Chamber of the Court of Cassation in its decision of 22 January 1991 *Fabris v. Loudmer* and in the decision of the Plenary Meeting of 5 November 1993. Moreover, the description of the work making the quotation, in other words the television programme, as a work of information, was not retained in the analysis of the Court of Cassation.

**Decision of the 1st Chamber of the Court of Cassation, 4 July 1995; *Société nationale de programmes Antenne 2 vs. Société SPADEM*. Available at the Observatory in French.**

(Laurence Giudicelli, Paris)

**FRANCE:** Decision of the Court of Cassation on the exclusivity of television films

The Court of Cassation, in a decision of 4 July 1995, notes that the rights transmitted to the *Institut National de l'Audiovisuel* (INA), by virtue of the Act of 29 July 1982, are those held by the *société nationale de programmes de télévision France régions* (FR3) under the coproduction and distribution contract for six television films (adapted from the work of Edgar Allan Poe "Tales of Mystery and Imagination"), concluded previously with a company. Proceeding with the necessary interpretation of this contract, the Court held finally that the stipulations which reserved exclusivity of the works for FR3 on its own network, did not entitle FR3 to use these works by selling distribution rights to other networks, so that the INA, taking over the rights of FR3, did not have the right to surrender to third parties the rights which did not belong to the programme channels.

**Decision No 1245 P of the 1st Chamber of the Court of Cassation, 4 July 1995, *Institut National de l'Audiovisuel (INA) vs. S.A. Les films du triangle et a*. Available at the Observatory in French.**

(Laurence Giudicelli, Paris)

**NORWAY:** Cable operator found guilty of copyright infringement

Long negotiations between EuroSport and cable operator, Janco Kabel, on the retransmission of the European sport channel's programmes came to a halt since the parties could not agree on the fee to be paid in return for the permission to distribute the EuroSport signal. Janco Kabel though, continued to broadcast EuroSports programmes for two and a half months, according to EuroSport, without any permission.

A Norwegian court found that Janco Kabel had no right to retransmit the programmes and sentenced the cable operator to pay damages of nearly 1,5 million Norwegian Kroner. An appeal is now pending. If the decision is upheld, other cable operators might be affected for the reason that several cable operators in *Norsk Kabel-TV Forbund (NKTVF)* followed Janco Kabel's example in retransmitting EuroSport after the failure to agree on the conditions of a copyright licence to do so.

**Eurosport vs. Janco Kabel, *Oslo Byrett, Tingshuset i sak 94-7941 A/77*. Available at the Observatory in Norwegian.**



FRANCE: Decision of the Court of Cassation about the responsibility of a sub-contractor of technical production of a film

In its decision of 4 July 1995, the Court of Cassation supported the first judges' rulings which had found against the sub-contractor entrusted with the technical production of copies of an advertising film concerning a loan, who had committed a serious fault in not checking if the correction of rates requested by the client was clearly indicated in the message transmitted. This serious fault cancels the liability limitation clause.

The case calls into question the responsibility of the *Régie française de publicité* (RFP) in the carrying out of its task, as a public administrative service, of exercising supervision through the aforementioned RFP of messages intended for broadcasting. This supervision is carried out by a delegation of the CNCL, an independent administrative authority (and predecessor of the *Conseil supérieur de l'audiovisuel*) entrusted by the Act of 30 September 1986 with the task of ensuring the principle of freedom of communication by the supervision of programming of advertising broadcasts.

Decision of the 1st Chamber of the Court of Cassation, No 1244, 4 July 1995, *Sté Télésta vs. Sté DDAMGTB*. Available at the Observatory in french.

(Laurence Giudicelli, Paris)

RUSSIAN FEDERATION: Decision of the Judicial Chamber against the publishing of an article in *Moskovskaia pravda*

State Duma Vice Chairman A. Chilingarov appealed to the Judicial Chamber of Information Disputes regarding a publication in *Moskovskaia pravda* on 16 June 1995. The claimant argued that the publication was untrue and contained a set of defamatory statements designed to discredit his political, social and professional reputation and that it also discredited the authority of legislative power.

The Judicial Chamber established that the article contained negative analysis of the social-political activity of Chilingarov as well as unfavorable evaluations of several of his personality traits. The Judicial Chamber decided:

- to recognize that the publication was based on unreliable and false information and that it therefore represents an abuse of the mass media as stipulated in Article 59 p 2 of the Law on Mass Media, and a violation of ethical norms;
- to reprimand *Moskovskaia pravda's* Chief Editor for publishing the article;
- to propose that the editorial board of *Moskovskaia pravda* examines disciplinary action against members of the editorial staff who prepared the article for publication;
- to publish the decision of the Judicial Chamber in *Rossiiskaia gazeta*;
- to recommend the Chief Editor of *Moskovskaia pravda* to publish the decision.

Decision No 20(57) of the Judicial Chamber of Information Disputes of 13 July 1995, *Rossiiskaia gazeta* of 20 July 1995: 6. A summary in English was published in English in the Post-Soviet Media Law & Policy Newsletter, Issue 21 of 27 September 1995, pp 10-11. Available through the Observatory.

FRANCE: Contribution of public audiovisual communication companies to campaigns of general interest appealing to the generosity of the public

The circular, dated 12 September 1995, specifies the conditions according to which the different non-profitmaking organisations which organise each year campaigns of general interest appealing to the generosity of the public may ask for help from public sector audiovisual communication companies (radio or television).

Circular on the contribution of public sector audiovisual communication companies to campaigns of general interest appealing to the generosity of the public of 12 September 1995. *Journal Officiel de la République française* of 22 September 1995, p. 13890. Available in French at the Observatory.

(Laurence Giudicelli, Paris)



**UNITED KINGDOM: Unsuccessful challenge to refusal to permit radio advertising by Amnesty International**

The Broadcasting Act 1990 (s. 92(2)) prohibits advertising on commercial radio by an organisation whose objectives are 'wholly or mainly of a political nature'; this is also prohibited by the Radio Authority's Advertising Code. Amnesty International was refused permission to advertise by the Radio Authority and challenged this by judicial review, arguing that the prohibition should be narrowly construed in accordance with Article 10 of the European Convention on Human Rights; thus it should apply only to organisations seeking a specific change in government whilst the objectives of Amnesty are humanitarian and impartial. The High Court rejected Amnesty's application, holding that other interests as well as freedom of speech were involved, such as the right of listeners not to receive contentious material which was, by the nature of radio, intrusive. As there was no precise definition of the term 'political' the Authority had a degree of discretion in its interpretation and had undertaken the interpretation in a manner which accorded statute and case law. Although the objectives of Amnesty are humanitarian they are also political in the broader sense envisaged by the Code and so could not be advertised on radio or television.

**R. v Radio Authority ex parte Bull, The Times, July 20 1995. Available through the Observatory in English.**

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

**UNITED KINGDOM: ITC imposes financial penalties on MTV Europe**

The members of the Independent Television Commission decided on 14 September this year that the satellite channel, MTV Europe, should be required to pay financial penalties totalling £ 60,000 for three breaches of the ITC's Programme and Advertising Codes. The penalties incurred upon MTV Europe were based on the breach of Section 1.5 (i) of the Programme Code which states that material unsuitable for children must not be broadcast at times when large numbers of children may be expected to be watching. The terms of the MTV Europe licence require that the ITC's Codes are observed. Under Sections 41(1) and 45(5) and (6) of the Broadcasting Act 1990, the ITC has the discretion to impose a maximum penalty of £ 50,000 for any breach of licence by a cable or satellite programme company. This is the first occasion on which the ITC has levied a financial penalty on a non-domestic satellite licensee.

**Decision of 14 September 1995. Available in English through the Observatory.**

LEGISLATION

**RUSSIAN FEDERATION: New advertising law**

The much-debated and anticipated federal Advertising Statute is a comprehensive Act that regulates advertising in Russia and aims to curb misleading and other unacceptable advertisements. The Statute is based on a draft proposed by the State Anti-monopoly Committee in 1994 and differs from a draft tabled around the same time by the Association of Advertising Agencies. The statute applies to both Russian and foreign entities and individuals involved in advertising in the Russian Federation.

The Statute restricts, and from 1 January, completely prohibits alcohol and tobacco advertising on television. Furthermore, such products can no longer be advertised inside or within 100 meters of schools, stadiums, medical, or cultural facilities (Article 16). The broadcasting of advertisements on television and radio stations will be limited to a maximum of 25 percent of total broadcasting time over a 24-hour period. The broadcasting of advertising messages will be prohibited during programmes for children, religious programmes, live broadcasts of state events, or programmes that last less than 15 minutes (Article 11).

The Statute prohibits any advertising by banking, insurance and securities businesses, claiming or promising the profitability of such services (Article 17).

The State Anti-monopoly Committee is charged with enforcing these and other restrictions with the power to impose fines of up to the equivalent in roubles of US\$ 55,000.

**Advertising Statute adopted by the State Duma on 14 June 1995 and signed by President Yeltsin on 18 July 1995. Entry into force: 24 July 1995. Published in Sobranie zakonodatelstva Rossiyskoi Federatsii, No 30 of 24 July 1995. Available in full text Russian at the Observatory.**

(Andrei Richter,  
Faculty of Journalism, Moscow State University)



**POLAND: New regulation on licensing fees for radio and television service operators**

Poland's National Broadcasting Council issued a new regulation on licensing fees on 26 May 1995. This makes certain changes in the previous regulation on licensing fees for radio and television service operators of 3 June 1993, as amended on 19 May 1994.

The regulation is based on Section 40 of the Polish Broadcasting Act of 29 December 1992, which introduces a fee for broadcasting licences issued to private broadcasters. The fee itself is determined by the National Broadcasting Council in consultation with the Minister of Communications, with reference to the nature of the broadcasting body and its programme. It is separate from the fee charged for the use of broadcasting facilities, and the fee charged for use of a frequency.

Among other things, the new regulation increases the fees for landbased, satellite and cable broadcasting (Sections 4-7).

**Regulation of the National Broadcasting Council of 26 May 1995 amending the Regulation concerning the fees for granting licences to provide radio and television programme services. Official Journal (*Dziennik Ustaw*) of 11 July 1995, Item 404. Available in English from the Observatory.**

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

**POLAND: New regulation on radio and television licence fees**

On 23 June 1995, the National Broadcasting Council issued a regulation under Section 48 (2) of the Polish Broadcasting Act of 29 December 1992, introducing new licence fees for radio and television sets.

This supersedes the Broadcasting Fees Regulation of 21 July 1993, as amended on 28 October 1994.

When the new regulation comes into force on 1 January 1996, there will be a monthly licence fee of 2.40 Zlotys on radios, and a fee of 7 Zlotys on television sets or both.

Modes and methods of payment are also regulated, and certain groups are exempted.

**Regulation of the National Broadcasting Council of 23 June 1995 concerning licence fees for the use of radio and television sets. Official Journal (*Dziennik Ustaw*) No. 95 of 19 August 1995, Item 477. Available in English from the Observatory.**

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

## LAW RELATED POLICY DEVELOPMENTS

**TAJIKISTAN: Draft Statute on Television and Radio**

A draft Statute on Television and Radio is currently under consideration in Tajikistan. The draft Statute applies to all forms of television and radio except for: special closed video systems (industrial, technical, internal production, educational, internal production, educational, service, and others), radio (amateur broadcasters' communications, sport radio, and others). As well as other forms of communication operating on the basis of individual calls or using special channels for the dissemination of information for purposes and tasks other than those which are the responsibility of television and radio broadcasters in the sense of the Statute.

The Statute includes general principles of television and radio broadcasting and prohibits interference and censorship. The general principles also comprise the tasks of a State Authority, the State Committee of the Republic of Tajikistan on Television and Radio Broadcasting (*Gosteleradio*) to implement the rules of the Statute. In fact, *Gosteleradio* is the State's radio and television broadcaster to which the draft Statute assigns the power to act as a licensing authority for all broadcasting activity.

Furthermore the Statute includes rules on the procedure for the establishment and liquidation of television and radio broadcasters; on the organisation of television and radio broadcasting; on defamation and the invasion of privacy.

**Draft Statute of the Republic of Tajikistan on Television and Radio. Selected provisions of the Bill were published in English in the Post-Soviet Media Law & Policy Newsletter, Issue 21 of 27 September 1995, pp 13-16. Available in English through the Observatory.**



FRANCE: The *Conseil Supérieur de l'Audiovisuel* (CSA) circularises television programme producers on illegal indirect advertising

In two recent circulars, France's media watchdog body, the *Conseil Supérieur de l'Audiovisuel* (CSA) told TV programme producers throughout the country that it meant to ensure, from 1 September 1995, that the regulations on the acceptability of certain kinds of advertising were strictly observed in individual programmes. These regulations are set out in the implementing Decree, No. 92-280 of 27 March 1992, on Section 27 (1) of Act No. 86-1067 of 30 September 1986 (the French Broadcasting Act). The Decree was issued to transpose the Directive on "Television without Frontiers" into national French law.

1. In the first circular, the CSA makes it clear that printed media financially or editorially involved in the preparation of individual programmes may be advertised only within the context of:

- a) sponsorship ("parrainage") of a programme under Articles 17-20 of the Decree of 27 March 1992, with no influence on its content;
- b) coproduction of a programme with equal rights for both partners, including copyright in the joint production, and the right to be publicly named as coproducer (logo, titles, end credits), but without direct or indirect promotion of the printed medium;
- c) on strict conditions, also occasional cooperation on certain clearly defined parts of a programme, with no effect on the television company's independence in respect of content and with an indication of the fact.

2. In the second circular, the CSA considers the legal status of gameshows, interactive gameshows and (traditional) TV competitions (competitions in which only viewers take part, but with no possibility of interactively influencing the course or content of the programme). It uses the type, context and main features of programmes to distinguish between:

- a) the above mentioned programme formats in their simplest form, i.e. which are programmes in their own right;
- b) the inclusion of such programmes in other programme formats (news programmes, sports programmes);
- c) the insertion of such programme formats in a way that they do not form part of another programme, but are directly connected with another programme by reason of their content and timing;
- d) a programme format of this kind which has no relevance to any kind of programme.

Gameshows and competitions which are programme formats in their own right are the only ones which directly meet the conditions for sponsorship laid down in Article 18 of the Decree of 27 March 1992. On certain strict conditions, the CSA accepts gameshows and competitions which form part of other programme formats, as well as those which do not form part of other programme formats, but are directly connected with other programmes by reason of their content and timing, as being essentially the same as those which are programme formats in their own right. This means that Article 18 of the Decree of 27 March 1992 applies to them as well. On the other hand, the CSA declares that gameshows and competitions which have no relevance to any kind of programme are by definition unacceptable, since they serve only to promote goods and services, and so qualify as indirect advertising of the kind which may not be broadcast.

*Conseil Supérieur de l'Audiovisuel* (CSA), lettres circulaires à l'ensemble des chaînes de télévision (circulars to all television channels), August 1995.

Décret no 92-280 du 27 mars 1992 pris pour l'application du 1<sup>o</sup> de l'article 27 de la loi no 86-1067 du 30 septembre 1986 relative à la liberté de la communication et fixant les principes généraux concernant le régime applicable à la publicité et au parrainage (Decree No. 92-280 of 27 March 1992 implementing Section 27 of Act No. 86-1067 of 30 September 1986 on freedom of communication and laying down general principles for the regulation of advertising and sponsorship, Official Journal of the French Republic, 28 March 1992, pp. 4313-4315. All documents available in French from the Observatory.

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

## News

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

### Commissioner Monti in favour of harmonising national media ownership rules

On 26 September 1995, Mr Mario Monti, member of the European Commission responsible for the functioning of the Internal Market, announced that he is personally in favour of harmonising national media ownership rules. He made his announcement in a meeting of the European Parliament's Committee on culture, youth and sports.

Given the multiplication of transfrontier media activities, the risks of circumvention of national laws increases, which makes these laws ineffective and may thus provoke serious conflicts between national authorities. Furthermore, when media undertakings, notably with a view to the development of the information society, seek to develop themselves and to invest across frontiers, there is a need to create a level playing field so that they can benefit from the opportunities offered by an area without frontiers to promote the growth and competitiveness of the European media industry. Finally, given the fact that different Member States have launched projects to modernise their national rules on media ownership and media activities, the Commissioner believes that the time has come to coordinate media ownership rules at the level of the European Union so as to prevent that the Internal Market being refragmented.

Commissioner Monti announced that he had asked his services to prepare a draft Directive for the co-ordination of national media ownership rules with a view to present it to the Commission in the first three months of 1996. Mr Monti did not specify whether the draft Directive would only propose the harmonisation of national cross media ownership rules or also ownership rules relating only to the television, or radio or press sectors. He did say, however, that any future provisions should in any case be strictly limited and proportional to what is essential for the functioning of the Internal Market. He also indicated that they should establish, in regard to access to media ownership, a high and equivalent level of protection of pluralism between the Member States. Finally, they should offer the necessary legal security for the investments of a competitive European media industry.

The full text of Commissioner Monti's presentation to the European Parliament's Committee on youth, culture and sports is available in French at the Observatory.

### GERMANY: New television projects - Recommendation on channel access

Because the cable networks are technically restricted to 330 Mhz analog, i.e. can carry a maximum of 31 analog programmes, the flood of new TV projects is combining with applications for the dissemination of foreign programmes to create channel capacity problems throughout the Federal Republic.

The proliferation of domestic and foreign satellite programmes is also producing a bottleneck effect. Before, *Telekom* was always able to make room for new programmes, but now only a few programmes are getting on the cable network - and some of them only by switching with others. The situation is aggravated by *Telekom's* refusal to expand its digital distribution capacity.

In June 1995, the Conference of Directors of Land Media Authorities (DLM) accordingly recommended that uniform principles on programme choice and joint criteria for the admission of TV programmes, which were not subject to Land regulations on order of access, be drawn up as a guiding basis for the new regulations on cable access.

The conference felt that legal and other differences between the various Länder made uniform regulations on cable access throughout the Federal Republic both impossible in law and undesirable in terms of programmes.

With this proviso, they laid down a number of general criteria to guide decisions on priority of access: plurality of opinion / broad choice of programmes, broad choice of topics / operator's past programme record, journalistic record so far / minority interest coverage / programmes for specific target groups / cultural pluralism, particularly linguistic pluralism / projected reception area / reception quality / acceptability to viewers.

Television programmes were also assigned to categories, for each of which a definite number of cable channels will be reserved.

The DLM also suggested that time-sharing should be considered as a way of increasing programme choice, whenever channels were not being fully used or whenever several operators could sensibly be accommodated on a single channel and are in agreement with this solution.

In spite of the channel shortage, widespread compliance with this recommendation by the Land media authorities would serve several purposes: protecting existing programmes and giving new ones a fair chance, as well as ensuring a broad range of programmes from different countries and in different languages, and catering for regional needs into the bargain.

At the same time, the Land media authorities still regard expansion of *Telekom AG's* broadband cable networks for the distribution of analog TV programmes beyond 450 Mhz as high priority, since the provision of three hyperband TV channels is not enough to solve the capacity problem.

(Stefanie Junker  
Institut für Europäisches Medienrecht - EMR)



#### GERMANY: First teleshopping channel licensed

In Bavaria, Germany's first teleshopping channel was officially licensed in September 1995. A public law agreement had already been concluded in August between the Bavarian Land Authority for New Media (BLM) and Home Order Television LTD. (HOT) on an interactive shopping service, using broadcasting technology and was approved by the BLM's Media Council. The new channel will be used to present goods and services which HOT sells or provides. It may not carry commercials for other advertisers, nor broadcast programmes or material which are journalistic in character and have no direct connection with presentation and promotion of the goods and services on offer.

To start with, HOT will be accessible only on the Bavarian cable network. Satellite will follow only when the Conference of Directors of the media authorities of the *Länder* (DLM) gives HOT its approval. The two-thirds majority needed for this could not be obtained at an DLM conference in September. Before deciding whether HOT is acceptable, DLM feels that several points need to be clarified. Specifically, a decision is needed as to whether the project qualifies as broadcasting. ALM will be considering the matter again in November.

(Volker Kreutzer  
*Institut für Europäisches Medienrecht - EMR*)

#### UNITED KINGDOM: Television regulator responds to government review of the rules on media ownership, and seeks to regulate access to subscription television

The Independent Television Commission has responded to the Government's proposals on Media Ownership. It has broadly welcomed the thrust of the proposals, in particular the acceptance of the continuing need for regulation which goes beyond the rules of ordinary competition law. It also supports the limited relaxation proposed in the rules limiting cross-media ownership. The Commission agrees that a more flexible definition of control be adopted which will not be confined to voting rights of share ownership but extends to considerations such as economic interest.

The ITC has reservations about the proposal to limit the holding of Channel 3 licences to a maximum of two, preferring a market share limit such as 25% of total advertising revenue. It welcomes the Government's acceptance of the need to licence and regulate conditional access and subscriber management arrangements upon which subscription television depends. At the moment in the UK, the main package of existing analogue satellite broadcasts, the scrambling system, the key and the subscriber management services are controlled by a group of companies associated with News International, and there is no obvious challenger in relation to future services. However, the Commission opposes the proposal that such regulation be entrusted to the Office of Telecommunications, wishing itself to become the regulator as such regulation relates to the availability, content and diversity of subscription services.

**Media Ownership: ITC Response to the Government's Proposals, August 1995. Available through the Observatory.**

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

#### LATVIA: Latest developments in the field of media legislation

In IRIS 1995-7:5, we reported that Parliament had rejected the Latvian Radio and Television Act and referred it back to the committee. The Act has now been passed on a second attempt and has come into force.

Further legislation is being discussed. A Freedom of Information Act is, for example, in the pipeline. This makes it possible to classify information as "public", "confidential" or a "state secret", and specifies the empowering state authorities. It expressly states that the classification of information as confidential may not be misused to conceal misconduct by an individual or the state.

Changes in the field of copyright law can also be expected shortly. For one thing, penalties for copyright violations are to be increased, with prison sentences of up to six years for the worst offenders.

(Volker Kreutzer  
*Institut für Europäisches Medienrecht - EMR*)

## AGENDA

### The Law and Business of Multimedia - exploiting industry "convergence" for commercial gain

London, Park Lane Hotel,  
30 - 31 October  
Organised by IBC  
Legal Studies and  
Services Limited  
For registration call Susan  
Verneuil or Ruth Hogg  
on +44 171 673 4383

### 7th European Television and Film Forum: Building the European Audiovisual Market - creative potential, economic trends, social needs

2 - 4 November 1995,  
Elounda, Greece  
For registration and  
information contact:  
Iona-Rxandra Bachmayer,  
Forum Assistant, at the  
European Institute for the  
Media, Kaistrase 13, 402  
21 Düsseldorf, Germany  
Tel.: +49 211 90 10 479  
Fax: +49 211 90 10 456

### International Copyright (Droit d'auteur international)

6-7 November 1995, Paris  
A workshop organised by  
the Institute for Intellectual  
Property Henri-Desbois,  
IRPI (*Institut de recherche  
en propriété intellectuelle  
Henri-Desbois*)  
For further information  
contact: Catherine Luuyt,  
Chambre de Commerce et  
d'Industrie de Paris,  
2 place de la Bourse  
75002 Paris  
Tel.: +33 1 40 26 25 81  
Fax: +33 1 40 41 91 40

### Multimedia und rechtlicher handlungsbedarf

9 November 1995,  
Luxemburg  
Organised by the *Institut für  
Europäisches Medienrecht*  
in collaboration with the  
*Service des Médias et de*

*l'Audiovisuel* in Luxemburg  
For registration and  
information contact: EMR,  
*Institut für Europäisches  
Medienrecht e.V.*,  
Hohenzollenstraße 13,  
D-66117 Saarbrücken  
Tel.: +49 681 51187  
Fax: +49 681 51791

### 10th Annual Seminar of the Dutch Foundation for Copyright Promotion: Trade-related aspects of copyright

10 November 1995,  
Amsterdam,  
The Royal Tropical Institute  
For information and  
registration: Stichting  
Auteursrechtmanifestaties,  
P.O. Box 2184, NL-1180  
ED Amstelveen.  
Tel.: +31 20 5407405  
Fax: +31 20 5407496

### Media Platform 95

13 - 15 November, London  
Monday the 13th there will  
be a workshop on ' Cross  
Channel Co-Production -  
Producing partnerships:  
The Anglo-French  
coproduction agreement'.  
Organiser is the British  
Academy of Film and  
Television Arts in  
cooperation with the  
London Film Festival, the  
London Programme Market,  
the UK Media Desk  
and Euro Aim.  
For information and  
registration: Media Platform  
'95, Sally Hall, The London  
Programme Market,  
23-24 George Street,  
Richmond, Surrey TW9 1HY  
Tel.: +44 181 9485522  
Fax: +44 181 3320495

### Droit du multimedia et des Autoroutes de l'information

15 - 16 November,  
Paris, Terrass Hotel  
Organised by EuroForum.  
For information and  
registration: Christine  
Liebault, EuroForum,  
35 rue Greneta,  
750 02 Paris,  
Tel.: +33 1 44 88 14 97  
Fax: +33 1 44 88 14 99

### Fundamental rights and new information technologies in the audiovisual sector

organised by the  
Government of the Republic  
of San Marino and the  
International Movement of  
Catholic Jurists in  
collaboration with the  
European Audiovisual  
Observatory, the  
Directorate of Human  
Rights of the Council of  
Europe, the European  
Commission and the  
Institute of Human Rights of  
the Paris Bar, Venue:  
European Court of Human  
Rights, Strasbourg,  
16 and 17 November 1995;  
FF 500. Conference  
secretariat: Alsace Pauli  
Voyages, 28 Rue de Vieux  
marché aux Vins,  
F-67000 Strasbourg;  
Tel.: +33 88221318  
Fax +33 88221987.  
Max. number of  
participants: 150

### EBU Copyright symposium:

**Broadcasters in the  
Information Society**  
Vienna 17 November 1995.  
Information: EBU,  
Department of Legal Affairs,  
Tel.: +41-22-7172505  
Fax +41-22-7172470

### La Société de l'information: réelle ou virtuelle?

**Approches juridique,  
technologique,  
organisationnelle et sociale**  
17 - 18 novembre 1995,  
Brussels  
Organised by *Le Centre de  
Droit de l'Information et de  
la Communication de la  
Faculté de droit, le Service  
Télématique et  
Communication, le Groupe  
de Recherche en  
Informatique et Sciences  
humaines* and the *Institut  
d'Etudes européennes*.  
For registration and  
information contact:

Natascha Vanderheyden,  
Université Libre de  
Bruxelles, Institut d'Etudes  
Européennes, 39 avenue  
Franklin Roosevelt,  
CP 172, B-1050 Brussels.  
Fax: +32 2 6503068

**One-Day Seminar  
on Advertising  
and Copyright**

24 november,  
Montreal (Canada)  
Organised by the ALAI  
Canada.

For information and  
registration:

Ghislain Roussel  
Tel.: + 1 514 864 23 93  
Fax: + 1 514 864 41 60/41  
61 or Andrea F Rush  
Tel.: +1 416 862 57 19  
Fax: +1 416 862 76 61

**The 8th Annual  
Conference on  
International  
telecommunications  
contracts and Dispute  
resolution - a business  
review**

London, The Café Royal,  
30 November - 1 December  
Day 1: International  
Telecommunications  
Contracts

Day 2: Dispute Resolution  
Organised by IBC Technical  
Services Ltd in association  
with Inteconnect  
Communications Ltd  
and Hill & Associates  
Booking through IBC  
Technical Services Ltd,  
Gilmora House,  
57-61 Mortimer Street,  
London W1N 8JX.  
Tel.: +44 171 637 4383  
Fax: +44 171 636 1976

**Multimedia - Legal and  
Business Issues,  
New Problems,  
New Solutions**

A seminar on protecting,  
acquiring, licensing  
and exploiting rights  
in multimedia.  
30 November - 1 December,  
London, Forte Crest  
Regents Park

Organised by EuroForum.  
For information and  
registration call:  
Tel.: +44 171 582 24 23 or  
Fax: +44 171 793 85 44

**Copyright in the  
Entertainment Industry**

London 5 December 1995.  
Information: Entertainment  
Forum/Hawksmere;  
Tel.: +44 171 8248257  
Fax +44 1717304293

**SESAM, French Copyright  
Collective Society on  
Multimedia Products  
or Works**

Mandate and Management  
Paradigm in Multimedia  
5 december, Montreal  
(Canada)  
Organised by the ALAI  
Canada. For information  
and registration:  
Ghislain Roussel  
Tel.: + 1 514 8642393  
Fax + 1 514 8644160/4161  
or Andrea F Rush  
Tel.: +1 416 8625719  
Fax: +1 416 8627661

**Droits d'auteur  
et multimedia**

6 - 7 December, Paris  
Organised by the  
*Observatoire des Industries  
du Multimedia*, 320 rue  
Saint-Honore 750 01 Paris,  
Tel: +33 1 44 55 38 50  
Fax: +33 1 42 61 72 27

**Developing an Intergrated  
Strategy for Advertising in  
a Pan-European Market**

11 december 1995,  
London, Café Royal  
Organised by IBC  
Marketing Conferences  
For information and  
registration contact:  
Fiona Miller  
or Olu Orugboh,  
IBC Marketing  
Conferences,  
57-61 Mortimer Street,  
London W1N 8JX,  
England  
Tel.: +44 171 637 43 83  
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## PUBLICATIONS

Berenboom, A. *Le nouveau Droit d'Auteur et les droits voisins*. Maison Larcier, 1995. For more information and command:  
Tel.: +32 10 482500  
Fax: +32 10 482519

Legicom, *Le multimédia et les autoroutes de l'information*, N°8  
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ISBN 0 421 372 109

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ISBN 5-7260-0792-1

## THE EUROPEAN AUDIOVISUAL OBSERVATORY

Emanating from Audiovisual EUREKA with 33 Member States plus the European Commission and operating in the framework of the Council of Europe and through Europe's largest network of professional partners and organisations, the European Audiovisual Observatory acts as an information and reference centre for professionals regarding all legal, economic and practical data relating to television, cinema and video throughout Europe. The team of the Observatory consists of a small number of qualified specialists which commit themselves in this unprecedented international venture.

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We are looking for a law student in the final year of her or his studies. It is essential that she or he has a good active and passive knowledge of English, French and German. Knowledge of or experience in the audio-visual sector is an advantage.

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Typed or printed applications accompanied by one or more references may be send before 15 July 1996 to :

**The European Audiovisual Observatory**  
Ms Anne Boyer - Administrator  
76 Allée de la Robertsau  
F-67000 STRASBOURG  
Fax: +33 88144419

or by electronic mail to : [A.van.Loos@Obs.c-Strasbourg.fr](mailto:A.van.Loos@Obs.c-Strasbourg.fr)