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INTERNATIONAL

EFTA

Surveillance Authority: Norwegian Ban on Certain Cross-Border Television Broadcasts Compatible with EEA Law

On 8 October 2003, the EFTA Surveillance Authority delivered a decision pursuant to Article 2a(2) of the Television Without Frontiers Directive (Directive 89/552/EEC as amended by Directive 97/36/EC), confirming the compatibility with EEA law of measures taken by Norway that restrict retransmission of certain pornographic television programmes deemed to be detrimental to minors, in Norwegian digital cable TV networks. The prohibition concerns broadcasts of three different pay-TV channels based in Sweden.

On 25 June 2003, *Statens medievorvaltning* (the Norwegian Mass Media Authority) decided to prohibit retransmission of pornographic programmes on the Swedish television channels *Canal+ Gul*, *Canal+ Blå* and *TV1000* in Norwegian digital cable TV networks, as the programmes were judged to be in contravention of Section 204 of the General Civil Penal Code. Norway notified the transmitting State, Sweden and the EFTA Surveillance Authority of the decision taken by the Mass Media Authority in July 2003. Prior consultations held between the parties had not produced an amicable settlement in the matter.

The Television Without Frontiers Directive requires the EEA States to ensure freedom of reception and not to restrict retransmission on their territory of television broadcasts emanating from another EEA State. The Directive institutes the principle of home state control over broadcasters. Article 2a(2) of the Directive provides, however, for an exception to these principles where a television broadcast from another EEA State "might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence." The alleged violation needs to be manifest, serious and grave and several other conditions must be fulfilled before any such derogating measures may be taken by the receiving state. The Directive requires the EFTA Surveillance Authority to evaluate the compatibility with EEA law of measures taken by an EEA EFTA State under this safeguard provision.

The EFTA Surveillance Authority concluded in its decision that the measures taken by the Norwegian authorities were compatible with EEA law since they did not discriminate on grounds of nationality, were proportionate to the objective to protect minors and were, although limited in their effectiveness, were not unsuitable for the purpose of achieving the desired aim.

The Authority acknowledged that an EEA State commands a wide, although not unfettered, discretion to restrict the broadcast on its territory of programmes that conflict with its national moral standards and that might thereby seriously impair the physical, mental or moral development of minors. It concluded that the programmes prohibited by Norway did not fall outside the application of Article 22(1) of the Directive and that, therefore, the prohibition had to be deemed - in the present case - to be within the discretion that Norway

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enjoyed in this regard. Furthermore, the Authority accepted in principle that an EEA State lays down in abstract terms - in the present case in the Penal Code - which types of content it deems to have detrimental effects on the development of minors, as long as the programmes prohibited thereby fall within Article 22(1) of the Directive.

The Surveillance Authority's decision is in line with the advisory opinion delivered by the EFTA Court in Case E-8/97 *TV1000 Sverige AB* v. Norway [1998] EFTA Court Report 68. ■

● **"EFTA Surveillance Authority confirms compatibility of Norwegian ban on certain cross-border television broadcasts with EEA law", Press Release of the EFTA Surveillance Authority PR(03)25, 8 October 2003, available at: http://esa.gazette.no/information/pressreleases/2003pr/dbaFile4425.html**

EN

EUROPEAN UNION

Court of Justice of the European Communities: New Decision on the Interpretation of the "Television Without Frontiers" Directive

On 23 October, the Court of Justice of the European Communities delivered its judgement in case C-245/01, *RTL v. Niedersächsische Landesmedienanstalt für privaten Rundfunk*. The dispute concerned the interpretation of Article 11 of the "Television Without Frontiers" Directive (Directive 89/552/EEC of 3 October 1989, as amended by Directive 97/36/EC), which lays down provisions in respect of television advertising, regulating *inter alia* the frequency of advertising breaks in the transmission of audiovisual works.

The questions referred by the *Niedersächsisches Oberverwaltungsgericht* (Lower Saxony Higher Administrative Court) concerned the interpretation of the notion of "series" according to Article 11, paragraph 3 of the Directive. The rules of the Directive provide for a distinction between feature films and films made for television, on the one hand, and works such as series, serials, light entertainment programmes and documentaries, on the other hand. Feature films and films made for television may be interrupted with an advertising break per period of 45 minutes; an additional break is permitted if the programme's duration is at least 20 minutes longer than two or more complete periods of 45 minutes. So, in practice, a film of 110 minutes may be interrupted three times. It should be recalled that, according to the *ARD v. Pro Sieben* judgment (case C-6/98 of 28 October 1999 – see IRIS 1999-10: 5), Article 11, paragraph 3, of the Directive is to be construed as prescribing the "gross principle", so that, in order to calculate the 45-minute period for the purpose of determining the number of advertising interruptions allowed in the broadcasting of audiovisual works such as feature films and films made for television, the duration of the advertisements must be included in that period.

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As an exception to the rule in paragraph 3, works such as series, serials, light entertainment programmes and documentaries are covered by a different provision in Article 11, paragraph 4, which is more generous to broadcasters allowing an advertising break every 20 minutes.

The dispute before the German Court concerned the legitimacy of the practice, followed by the private broadcaster *RTL*, of broadcasting some films made for television and interrupting them according to the rules inserted in paragraph 4 of Article 11. The broadcaster suggested a broad interpretation of the term "series", so including in that notion different films linked by formal elements such as identical broadcasting slots, or the fact that scripts are based on novels, or that there are common themes such as love, passion or family relationships in general.

The Court did not accept the position of *RTL*, according to which, since the primary objective of the Directive is to ensure freedom to provide broadcast television programmes, any rule of the Directive that provides for a limitation on this freedom should be construed strictly. Having stated that neither the Directive, its preparatory works, nor the European Convention on Transfrontier Television shed any light on the interpretation of the term "series", the Court construed Article 11, paragraph 3, by reference to the purpose of the provision and to its systematic interpretation. Implicitly reversing the solution given in *ARD* as to the aims of the Directive, the Court held that the purpose of Article 11 is to establish a balanced protection of the interests of television broadcasters and advertisers, on the one hand, and those of the rightsholders and consumers as television viewers, on the other hand. Also referring to the Preamble of the Directive, the Court maintained that for audiovisual works such as films made for television the text of the Directive is intended to provide television viewers with increased protection against excessive advertising, and a conception based on formal criteria, as that advanced by *RTL*, would undermine that purpose, leading to a circumvention of the rule. It follows that, according to the Court, the term "series" requires links of substance, that is common elements which relate to the content of the films concerned, such as, for example, the development of the same story from one episode to another or the reappearance of one or more characters in different episodes. ■

● **Judgment of the European Court of Justice of 23 October 2003, case C-245/01, RTL v. Niedersächsische Landesmedienanstalt für privaten Rundfunk, available at: http://www.curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=&datefs=&datefe=&nomusuel=&domaine=&mots=RTL&resmax=100**

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

Court of First Instance: Referral of the Sogecable-Via Digital Merger to the Spanish Authorities Upheld

On 30 September 2003, the Court of First Instance of the European Communities (CFI) upheld the Decision of the European Commission to refer the merger between the two main Spanish TV digital operators, *Sogecable* and *Via Digital*, to the Spanish competition authorities (see IRIS 2002-9: 8).

On May 2002, *Sogecable* and *Via Digital* reached an agreement to merge. According to Council Regulation (EEC) No. 4064/1989 of 21 December 1989 on the control of concentrations between undertakings (the EC Merger Regulation), the proposed concentration had a Community dimension, so the relevant authority would usually have been the European Commission. However, the Spanish Government requested the European Commission, on the basis of Article 9.2 of the EC Merger Regulation, to refer the case to the Spanish competition authorities. In August 2002, the Commission reached the conclusion that, given the national scope of the markets

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affected by this operation, the Spanish competition authorities should assess the transaction, under Spanish competition law. On 29 November 2002, the Spanish Council of Ministers decided to approve with conditions attached the proposed merger (see IRIS 2003-3: 10). The new digital TV platform which resulted from the *Sogecable/Via Digital* merger is called *Digital +* and has provided services from July 2003.

Some rival Spanish TV operators have appealed the Decision of the Spanish Council of Ministers before the Spanish Supreme Court, and they also appealed the Decision of the European Commission to refer the case to the Spanish authorities before the CFI. In this second appeal, they claimed that the proposed merger affected several European markets and that it should not have been referred to the Spanish authorities. However, the CFI has ruled that the Commission's Decision was well grounded and has upheld the Decision, rejecting this appeal. The appeal launched by these rival Spanish TV operators before the Spanish Supreme Court is still pending. ■

● **Judgment of the Court of First Instance of the European Communities of 30 September 2003, Cases T-346/02 and T-347/02, Cableuropa and others v. European Commission, available at:**
http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&lango=es&Submit=Buscar&docrequire=alldocs&numaff=&datefs=&datefe=&nomusuel=&domaine=&mots=Sogecable&resmax=100

DE-EL-ES-FI-FR-IT-NL-PT

European Commission: Decisions on State Financing of Public Service Broadcasters

The European Commission has recently announced a number of developments in its analysis of cases relating to State aids to public service broadcasters in certain European Member States.

On 15 October, the Commission concluded its investigations concerning certain *ad hoc* measures adopted in Italy and in Portugal during the 1990s in favour of public service broadcasters, declaring these measures compatible with the common market under Article 86(2) of the EC Treaty. In both cases, the Commission found that the *ad hoc* measures in question were limited to the financing of losses incurred by the public service broadcasters in the fulfilment of their public service mission and that no distortion of competition in commercial markets could be established.

In parallel, the Commission has sent letters to three Member States (Italy, Portugal and Spain), stating its preliminary view that amendments are needed to make the general system for financing public television in these states more transparent and to ensure sufficient safeguards against excessive subsidies (the aim of the Commission is to bring these financing systems into line with the Communication on the application of State aid rules to public service broadcasting – see IRIS 2001-10: 4). The letters have been sent under the procedure for existing aids in Article 88(1) EC Treaty, which provides that, as regards existing aid (i.e. aid which was introduced prior to the entry into force of the Treaty or the accession of a Member State to the EC, or aid authorised in the meantime), the Commission can propose to Member States any appropriate measures required for the smooth functioning of the Internal Market.

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The background to the Italian case is that in 1996 the private broadcaster *Mediaset* lodged a complaint with the Commission alleging that the licence fee granted to the Italian public service broadcaster *RAI*, as well as a series of *ad hoc* measures adopted in favour of *RAI* in the 1990s, amounted to illegal State aid. The Commission, after having enjoined Italy to provide all the relevant information on the nature of the aid (see IRIS 1999-3: 4), determined that the *ad hoc* measures adopted in the 1990s constituted "new aid" (as they were introduced after the signature of the EC Treaty) and opened a formal investigation under Article 88(2) EC Treaty in respect of these measures (which, as stated above, have now been declared compatible). The licence fee, on the other hand, has been seen as pre-dating the EC Treaty and has therefore been dealt with in parallel within the above-mentioned framework for existing aids.

As regards Portugal, the commercial broadcaster *SIC* complained repeatedly to the Commission that the system of annual compensation and nine *ad hoc* measures, granted to the public service broadcaster *RTP* by the Portuguese authorities, amounted to illegal State aid. The Commission adopted a decision on part of these complaints in 1996 (see IRIS 1996-10: 8), which was however annulled by the Court of First Instance in 2000 (see IRIS 2000-6: 2). The Commission then decided to open a formal investigation procedure under Article 88(2) EC Treaty in respect of the 9 *ad hoc* measures (now declared compatible) and, as in the case of Italy, analysed in parallel the system of annual compensation under the procedure for existing aids.

In the case of Spain, complaints of illegal State aid in favour of the public service broadcaster *RTVE* had been lodged by the private broadcasters *Telecinco* and *Antena 3* in 1992 and 1994. In 1998, the Commission was condemned by the CFI for failing to take a decision in the matter (see IRIS 1998-9: 5). After issuing an information injunction against Spain in 1999 (see IRIS 1999-3: 4), the Commission came to the preliminary conclusion that the financing mechanisms under assessment constitute existing State aid (as the measures in question were introduced prior to the entry of Spain into the European Communities). These public financing measures include "an unlimited State guarantee linked to the legal nature of the public entity of *RTVE*". The Commission has concluded that this State guarantee exceeds the net costs for *RTVE* of providing the public service and that therefore this existing aid measure should be amended. ■

● **"Commission decides on public TV financing in Italy and Portugal", Press Release of the European Commission IP/03/1399 of 15 October 2003, available at:**
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1399|0|RAPID&lg=EN&display=

DE-EN-ES-FR-IT-PT

European Commission: Communication on the Transition from Analogue to Digital Broadcasting

The European Commission has recently adopted a Communication setting out a guide for Member States on the transition to digital broadcasting. As set out in the Communication, the *e*Europe 2005 Action Plan (see IRIS 2003-4: 3) requires Member States to publish their switchover plans, including a possible date for ending analogue television, by the end of 2003. The Communication has two aims. Firstly, to advise Member States of the possible policy pitfalls to avoid and to identify aspects that should be part of national switchover plans. Secondly, to initiate a debate on how the recovered spectrum, once analogue television is switched off, can be reused in a transparent and fair way.

The Commission acknowledges that, although the

future benefits of digital broadcasting are indisputable, in the coming years some significant migration obstacles will have to be overcome. Switchover is not purely a technical issue. In light of the possible economic and social effects of switchover, the Commission sets out some criteria for policy interventions by Member States. The premise is that market forces and consumer demand should be the driving forces behind the switchover. In this perspective, policy interventions should be "transparent, justified, proportionate and timely" and should also be "formulated according to clearly defined and specific policy goals and market difficulties". Lastly, interventions should be non-discriminatory and technologically neutral. Policy interventions should take place at the national level, but, in light of the internal market dimension, there will be a role to play for the EU as regards, for example, benchmarking, equipment standards, consumer information, and facilitating and promoting access to added value services.

The Commission will not name a common date for analogue switch-off but states that switch-off should only take place "when digital broadcasting has achieved almost universal penetration". Furthermore, the Commission would like to initiate a debate concerning the recovered spectrum, when switchover will be completed. This debate would address questions of flexibility and efficiency in the field of spectrum usage. It would also address the cross-border effects of spectrum usage. The main goal is to find an approach that takes into account both the economic potential of spectrum release and other public policy objectives (it is proposed that the issue be discussed with Member States in the context of the recently established Community spectrum policy framework - see IRIS 2002-8: 2). ■

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● **Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off'), COM (2003) 541 final, 17 September 2003, available at:**
http://www.europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0541en01.pdf

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

European Commission: Infringement Proceedings against 8 Member States for Failure to Implement the New Framework for Electronic Communications

The European Commission has opened infringement proceedings (under Article 226 of the EC Treaty) against Belgium, France, Germany, Greece, Luxembourg, the Netherlands, Portugal and Spain, for failure to notify national measures implementing the new European regulatory framework for electronic communications.

The new regulatory framework consists of a package of instruments, which were adopted in 2002 (see IRIS 2002-3: 4 and IRIS 2002-7: 6), namely: Directive 2002/21/EC (Framework Directive), Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive), Directive 2002/58/EC (Data Protection Directive) and Decision 676/2002/EC (Radio Spectrum Decision). The framework is designed to further promote competition in the communications sector, also taking into account the increasing phenomenon of convergence (the regulatory package is thus technology-neutral, which means that it regulates all transmission networks in an equivalent manner).

Member States were to implement the Framework, Authorisation, Access and Universal Service Directives into national law by 24 July 2003. As of 6 October 2003, however, only seven Member States (Austria, Denmark, Finland, Ireland, Italy, Sweden and the UK) had implemented the Directives (Member States have until 31 October 2003 to implement the Data Protection Directive).

The Member States against which infringement proceedings have been launched have two months to respond to the Commission's concerns. Meanwhile, alongside formal enforcement action, the Commission is also pursuing alternative avenues to achieve rapid implementation of the package. It is thus working closely with the Member States' authorities in various forums (the Communications Committee, the European Regulators Group, the Radio Spectrum Committee and the Radio Spectrum Policy Group), as well as through bilateral meetings, towards this end.

The Commission, as well as the Council and the European Parliament, have repeatedly stressed the importance of full, effective and timely implementation of the new regulatory framework for the development of the European electronic communications sector (see for example IRIS 2003-3: 6-8 and IRIS 2003-4: 2). ■

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● **"Electronic Communications: European Commission launches infringement proceedings against eight Member States", Press Release of the European Commission IP/03/1356, 8 October 2003, available at:**
http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/03/1356|0|RAPID&lg=EN&display=

DE-EL-EN-ES-FR-NL-PT

NATIONAL

BROADCASTING

CY – New Law Regulates State Aid to Public Broadcaster

In July 2003, the House of Representatives approved CyBC Amendment Law (No. 2) of 2003 regulating state aid received annually by the national public broadcaster – the Cyprus Broadcasting Corporation (CyBC).

The new law fully harmonises national legislation with the relevant European *acquis* and more specifically with the provisions of Articles 86 and 87 of the European Community Treaty, the Amsterdam Protocol, the relevant Communication issued by the Commission (OJ No. C 320 of 15. November 2001) and Directives 80/723/EEC (OJ. No. L 195 of 29. July 1980) and 2000/52/EC (OJ No. L 193 of 29 July 2000).

The main provisions of this Law include:

- A precise definition of the term "public radio/television service";
- The assignment to the CyBC by the Republic of Cyprus of the provision of the above-mentioned service;
- A clarification that the CyBC may engage also in commercial activities provided they do not endanger the fulfillment by the Corporation of the general economic interest service mission;
- A condition that the CyBC may not use state aid in ways which compromise the competitiveness of other

broadcasters in the national audiovisual sector;

- A condition that the CyBC keeps separate accounts for its commercial and general economic interest activities, which should be available to the public;

- The CyBC will no longer be exempt from the payment of income tax;

- The monitoring of the implementation of the provisions of this law and regulations issued under it have been assigned to an independent authority;

- The auditing control of the Auditor General is extended in order to cover the use by CyBC of state aid in accordance with the provisions of this Law.

Regulations issued under this law shall define more precisely the content of the "public radio/television service" to be provided by CyBC. ■

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Media Law Expert

● Law No 116 (I) of 2003 on Amendment (No 2) of the Cyprus Broadcasting Corporation Law (State Aid); Official Government Gazette – Annex E.E. I (1) No. 3743, 25. July 2003.

EL

CY – Public Broadcaster's Programme Content Defined in Regulations

After a lengthy debate, the House of Representatives approved Regulations issued under Section 22A of CyBC Amendment Law (No. 2) of 2003 (see *supra*). The new Regulations provide the necessary legal framework for the implementation of certain provisions contained in the European Commission Communication on State aid *vis-à-vis* the provision of public radio/television services and more specifically the provision by the national public service broadcaster of a "balanced mix" of radio/television services to the general public.

For television the Regulations provide for the following programme mix (measured against the overall daily broadcasting time in the two CyBC television channels) in relation to the provision by the CyBC of public radio-television services: At least 40% information programmes, at least 10% cultural programmes, and not more than 50% entertainment programmes.

For radio the Regulations provide for the following programme mix (measured against the overall daily broadcasting time in the three CyBC radio channels) in relation to the provision by the CyBC of public radio/television services: At least 25% information programmes, at least 5% cultural programmes, and not more than 70% entertainment programmes. The Regulations also define the type of programmes included in the three general categories : information, cultural and entertainment.

Information programmes include, *inter alia*, news bulletins, discussion programmes on political, economic and social issues, documentaries on political, economic and social issues, news programmes for the Turkish Cypriot community, Cypriots living overseas and the national religious minorities.

Cultural programmes include, *inter alia*, programmes about the arts, traditional national and international cultural activities, such as music, dance, poetry, painting and sculpture, European and international cultural works such as classical music, ballet, theatre etc, Cypriot sketches and theatrical performances, documentaries on cultural themes, cultural magazine programmes on national and international cultural activities.

Finally, entertainment programmes include, *inter alia*, programmes included in the national list of events of major importance to society, sports programmes, children's programmes, general interest programmes about fashion, cooking, gardening, home decoration and general entertainment programmes such as feature films, television series and quiz shows. ■

Andreas Christodoulou
Media Law Expert

● Regulatory Administrative Act 616/2003: Cyprus Broadcasting Corporation Regulations (Public Radio/television Service), issued under Section 22A of Law 116 (I) of 2003; Official Government Gazette – Annex E.E. III (I) No. 3739, 25 July 2003.

EL

DE – *ZDF* Amends Youth Protection Guidelines

At its meeting on 10 October 2003, the Television Council of the public service broadcaster *ZDF* revised *ZDF's* internal guidelines on the protection of minors.

The guidelines firstly contain detailed provisions on the treatment of films that have been rated by a regional ratings authority or a voluntary self-regulatory body. They also ban the transmission of programmes with the same content as certain listed media; the ban also applies if the content has been significantly altered. The guidelines also include rules on exceptions made for specific reasons to the watershed provisions set out in Article 5.4 of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on Youth Protection in the Media). For example, a programme may be shown before the normal watershed for reasons of outstanding informational, documentary, historical or artistic value. Other rules deal with programme announcements, programme labelling and *ZDF's* telemedia services.

ZDF television programmes, like those of the broadcasters that make up the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (Union of German Public Service Broadcasters - *ARD*) are subject to the provisions of the *Jugendmedienschutz-Staatsvertrag* (see IRIS 2002–6: 13). However, the *Kommission für den Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*), which was set up on the basis of the Agreement, is not responsible for this part of the dual broadcasting system, but only for private broadcasters and telemedia providers. ■

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● *ZDF-Jugendschutzrichtlinien* (*ZDF* guidelines on safeguarding youth protection), 22 September 2000, version of 10 October 2003, available at: http://www.zdf.de/ZDFde/download/0,1896,2000717,00.pdf

DE

DE – Distinction Between Media Services and Broadcasting

The *Direktorenkonferenz der Landesmedienanstalten* (Conference of Regional Media Authority Directors - *DLM*), which comprises representatives of the German *Land* media authorities responsible for licensing and supervising private broadcasting, is currently discussing the distinction between broadcasting and media services. It has already decided that the concept of broadcasting can no longer be defined according to means of transmission. Technical progress and the resulting convergence of content mean that new definition criteria are needed. Practically speaking, the *DLM* believes that the distinction depends on the type of presentation, which is characterised by the relevance of the particular service to the formation of opinion.

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The legal background to this debate is provided by the new Article 4 of the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on Youth Protection in the Media - *JMStV*). This states that the dissemination of pornography is prohibited in broadcasting, but permitted in telemedia (teleservices and media services) as long as it is only accessible to adults (restricted user group) (see *infra*). If a provider wishes to offer pornographic content, it is therefore important to decide whether the service is classified as a media service or as broadcasting. The *DLM's* current discussion was prompted by several claims presented to the *Land* media authorities that content was harmless under media law because it did not constitute broadcasting, but a media service. Thus the regulations that apply to broadcasting are not applicable and pornographic material may be disseminated in accordance with Article 4 of the *JMStV*. One such claim was made to the relevant *Land* authority by TV broadcaster *Premiere* for a porn channel that was to be operated by the Swiss company *Erotic Media AG*. So far the *DLM* has not reached a decision on the distinction between broadcasting and media services, despite setting up its own working group, which has drafted an as yet unpublished report on the subject. A final decision was expected at a special meeting held in early November. ■

● ***KJM* press releases, available at http://www.alm.de/index2.htm**

DE

FR – Rejection of Scheme Devised by French Government for Increasing Revenue from Television Licence Fee

Clélia Zérah
Legipresse

The members of the National Assembly's Finance Committee have rejected the scheme the Government had included in the draft budget for 2004 aimed at reducing evasion of payment of the licence fee. Adoption of the amendment would have enabled the tax authorities to obtain the names and addresses of pay television operators' clients with a view to improving payment of the television licence fee. The operators of cable, satellite and encrypted television would have been invited to pass on their entire client files to the tax authorities, making it possible to cut the number of people evading payment of the fee – this number is currently estimated at 500,000. The *Commission nationale de l'informatique et des libertés* (national commission on information technology and liberties – CNIL) had denounced the scheme as an infringement of the arrangements for protecting personal information, claiming that it is out of proportion to the anticipated benefits.

Following this opinion, the Government had then sought to reintroduce the possibility of the tax authorities acquiring these files by tabling a sub-amendment, accompanied by new guarantees complying with the CNIL's requirements, ie placing a limit on the field, duration and scope of the information requested. The text also provided that subscribers would be informed of the use that could be made of data concerning them, which could identify them by name. The amendment has nevertheless been rejected.

Other amendments concerning the television licence fee were however adopted by the National Assembly. One of these abolished the lower rate of television licence fee for black and white sets, making it the same as that for colour sets, as MPs felt that a large proportion of these persons did in fact already possess an undeclared colour set. Televisions used in holiday homes would not be liable to the licence fee as long as they were not left there permanently. ■

● **Draft budget for 2004, available in French at: http://www.assemblee-nat.fr/12/budget/plf2004/discussion.asp#culture**

FR

FR – CSA Makes Recommendations on Programmes in Category V

Clélia Zerah
Legipresse

On 22 October the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body – CSA) published a recommendation for editors and distributors of television services broadcasting "cinematographic works that may not be shown to anyone under the age of 18 and pornographic or extremely violent programmes that may only be shown to discerning adults, likely to be damaging to the physical, mental or moral development of people under the age of 18" ("Category V programmes").

This recommendation follows on from a deliberation adopted by the CSA on 25 March 2003 providing that "for the broadcasting in digital mode of services broadcasting Category V programmes there must, in addition to the access control mechanism, also be an effective mechanism for blocking access to these programmes requiring the drawing up of a parental code to be supplied, subject to appropriate guarantees, to adult subscribers only; this technical system must meet the criteria laid down by the CSA".

The main purpose of the criteria listed by the CSA is to protect young people. With this in mind, the CSA advocates that Category V programmes should be subject, in addition to controlled access, to a special block making access impossible without entering a personal code. Subscribers should not be able to override the protection system, and would need to be informed at the time of signing the subscription contract of the lasting harm viewing this type of programme may cause to young people. Moreover, entering a personal code should be a prerequisite for being able to record programmes of this type.

Furthermore, Category V programmes may not be accessible in the context of promotional offers made to people who have not specifically decided to subscribe to the service and have access to these programmes.

Lastly, the editors and distributors concerned will be required to supply the CSA with an annual report on the implementation of the measures intended to prevent young people gaining access to Category V programmes. ■

● **Recommendation by the CSA to editors and distributors of television services broadcasting Category V programmes, 22 October 2003, available at: http://www.csa.fr/infos/textes/textes_detail.php?id=14295**

FR

GB – Competition Authorities Approve Major Broadcasting Merger

The British Secretary of State for Trade and Industry has accepted a recommendation from the Competition Commission that a merger between the two major UK broadcasters on ITV (Channel 3), Carlton and Granada, should be permitted to go ahead, subject to conditions relating to advertising sales (for the reference of the merger to the authorities see IRIS 2003-4: 9). The effect

will be to create a single company owning ITV in England (although in Scotland separate ownership will remain). This was one of the last mergers to be referred under the Fair Trading Act 1973, which places the final decision in the hands of the Secretary of State. Future mergers will be dealt with by the Commission itself under the Enterprise Act 2002, which depoliticises the system by leaving the final decision in the Commission's hands, although cases involving media concentration may in some cases be subject to intervention by the minister under the Communications Act 2003 (see IRIS 2003-8: 10). The latter Act also cleared the way for the decision by permitting the single ownership of ITV for the first time. Previously it had been organised as a system of regional licensees offering a common network, although considerable consolidation has already taken place.

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The Competition Commission concluded that the proposed merger would not operate against the public interest in the areas of programme production, the availability of studio facilities, or the future competition for ITV licences. However, in relation to the sale of advertising, the merger would have an adverse effect on future competition and so might be expected to operate against the public interest. Despite a decline in ITV's advertising share, the other channels are not yet sufficiently close substitutes for it, especially given the special advantages of ITV such as its unique ability to attract big audiences and its consistently high audience share in the evening peak. The Commission considered requiring the companies to divest their sale houses, but by a majority of 4 out of its 5 members decided not to recommend this remedy. Instead it required a contract rights renewal remedy. This gives all existing advertisers the option to renew the terms of their 2003 contracts without change for the duration of the remedy, except where a contract specified a share of broadcast, when it would vary in direct proportion to ITV's commercial impacts. The system will be overseen by an independent adjudicator or panel, and will last for at least three years. As such a remedy could be put into operation, the Commission considered that to ban the merger would be disproportionate. Further measures would also be required to protect the other remaining ITV licensees.

The Secretary of State implemented the recommendations without any change, and required them to be put in place by the end of the year. The conditions were less demanding than expected, and negotiations are now taking place to bring the merger into effect, subject to difficult discussions on the identity of the Chairman of the new company. ■

● **"Competition Commission's Findings on Carlton/Granada Merger", Department of Trade and Industry Press Release of 7 October 2003, available at: http://www.wired-gov.net/EDP8203R7W/WGArticle.asp?WCI=htmArticleView&WCU=ARTCL%5FPKEY%3D20115**

● **"Carlton Communications Plc and Granada Plc: A Report on the Proposed Merger", Competition Commission Report, available at: http://www.competition-commission.org.uk/rep_pub/reports/2003/482carlton.htm**

HU – Publication of a Concept Paper on a New Media Act

The *Miniszterelnöki Hivatal* (Prime Minister's Office – PMO) has published a concept paper proposing fundamental principles for a new media act. The planned act is intended to replace Act No I of 1996 on Radio and Television Services (Broadcasting Act), which currently regulates broadcasting activities in Hungary.

The concept paper was elaborated by three experts invited by the PMO. The authors of the document stated that they regard the paper, which is approximately 50 pages long, as a basis for future professional discussions.

The document consists of six chapters dealing with questions relating to:

- the institutional structure of public service broadcasting and media supervision;
- the regulation of commercial and non-profit broadcasting;
- advertising and sponsorship;
- cable networks as a means of programme distribution;
- matters of cross-ownership and media concentration;
- digital broadcasting.

The concept paper *inter alia* proposes the introduction of a unique, new system of regulatory bodies. According to this proposal the *Országos Rádió és Televízió Testület* (National Radio and Television Commission – ORTT), the independent regulatory authority for the media established by the Broadcasting Act, would be liquidated, and its functions would be transferred to four separate institutions. One of these is the already existing *Hírközlési Főfelügyelet* (Telecommunications Authority), the three other organs are to be set up new.

The paper also suggests the introduction of a complete ban on advertising in public service broadcasting. In return for the possibility to fill the gap left in the advertising market as a result of the withdrawal of public service broadcasters, the commercial broadcasters are expected to pay financial compensation. Beside this the paper does not suggest any other fundamental change to the present method of financing public service broadcasting, which is *de facto* a system of financing from the central state budget.

The document also proposes the abolition of public service obligations imposed on commercial broadcasters by the Hungarian legal regime currently in force.

As regards cross-ownership and media concentration the paper lists a set of provisions from the Broadcasting Act that it suggests should be abolished. The paper also proposes a more liberal manner of regulation to be imposed on cable operators, since – according to the authors – these enterprises do not produce content themselves therefore they cannot constitute a "monopoly of opinion" which would endanger media pluralism.

The recent publication of the document has stirred a public debate. Critics of the paper took note that the authors were still focusing on traditional ways of broadcasting instead of applying a technologically-neutral approach. Opponents of the proposal also noted, that – among other debated suggestions – the proposed transfer of licensing broadcasters from the independent ORTT to the government-supervised Telecommunications Authority could increase the danger of political influence on the media. It is also mentioned as a weakness of the document that it does not attempt to define the public service remit and the proposed system of financing these broadcasters would not reflect the actual tasks of these institutions. ■

Márk Lengyel
Legal Expert

● **Concept Paper *Egy új médiatörvény alapjai;* available at: http://www.kancellaria.gov.hu/media_vitaanyag/**

HU

LV – Introduction of Digital TV in Latvia

Lelda Ozola
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During summer 2003, some important developments took place that might delay the introduction of digital television in Latvia.

Latvia began to plan the introduction of digital TV as early as the year 2000. At that time Radio and Television Centre of Latvia sold 23% of the shares of Latvia Mobile Telephone to its daughter company – Digital Radio and Television Centre of Latvia (DRTCL) – to secure the financial means necessary for the introduction of digital TV. The DRTCL was established with the aim of implementing a digital television broadcasting network in Latvia and, by the end of 2006, to provide digital TV programme coverage in 97% of the territory of the Republic of Latvia. In 2001 a digital broadcasting network was developed. In May 2002 DRTCL began test broadcasting of digital television. At the end of 2002 it signed EUR a 150 million contract with Kempmayer Media Ltd. (based in the UK) envisaging that the company could freely choose the suppliers and sub-contractors in the process of introducing digital TV. The financing, which should secure this agreement, should come from the shares of Latvia Mobile Telephone. On 19 August 2003, the Chairman of the Board of the DRTCL handed in his resignation. On 26 August the Minister of Transport and Communications announced that the agreement mentioned above would be disadvantageous to Latvia. Therefore, on 29 August, the DRTCL filed a claim against Kempmayer Media Ltd. at the Arbitration Court of International Trade Chamber with the demand to suspend the agreement signed between the parties on 14 November 2002. The court decision is still pending as is the introduction of digital TV in Latvia. ■

● **Press releases of the Ministry of Traffic and Communications, available at:**
http://www.sam.gov.lv/news/article.php?id=2078
http://www.sam.gov.lv/news/article.php?id=2087
http://www.sam.gov.lv/news/article.php?id=2096
http://www.sam.gov.lv/news/article.php?id=2118

LV

NL – Football Clubs Rightful Owners of Broadcasting Rights to Home Matches

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The Dutch first league football clubs are and remain the sole owners of the broadcasting rights to their home matches. The Dutch Supreme Court decided this in a judgment of 23 May 2003. The Dutch national football organization *KNVB* brought the matter in question before the Supreme Court claiming the existence of a joint ownership (for itself and the individual clubs) of the broadcasting rights to first league matches. *KNVB* argued that its organization of the league and the playing of matches in the league by the clubs justified the granting to itself and to the clubs of a right of intellectual property. In a previous case in 1987, the Supreme Court had ruled that the individual clubs could ask for remuneration for their approval of the broadcasting of football matches on the basis of their ownership rights to the stadiums, the so-called "home-rights". However, in that earlier case no intellectual property right was granted. In this recent case, the Supreme Court decided that no reason had been given to change the former judgment; no intellectual property right could be found. Although *KNVB* represents the clubs, this does not mean that *KNVB* can claim joint ownership of the broadcasting rights. Only the clubs can set out limitations on access to the stadiums invoking their "home-rights". The fact that *KNVB* organizes the league and provides the referees does not change this. ■

● ***Hoge Raad* (Dutch Supreme Court), Judgment of 23 May 2003, *Koninklijke Nederlandse Voetbalbond (KNVB) v. Stichting Feyenoord*, LJN No: AF4607, available at:**
http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=47619

NL

PL – New draft Amendment to the Broadcasting Act

As the previous draft of comprehensive amendments to the Broadcasting Act of 29 December 1992 (Dz. U. of 2001, No. 101 Item 1114, as amended), was rejected by Parliament on 30 July 2003, the Government has prepared a new draft, which is – in regard to its content – reduced in certain aspects. The Council of Ministers adopted on 21 October 2003 draft legislation to adapt the Broadcasting Act in line with the Directive 89/552/EEC, amended by the Directive 97/36/EC – the so-called Directive "Television Without frontiers". They also tailor national legislation to the principles underlying Community law, with the aim of allowing entities from the European Economic Area to pursue broadcasting operations in Poland, which entails capital requirement liberalization.

The amendments lay down specific criteria which permit the identification of the jurisdiction over broadcasters within the framework of the internal legal order, in compliance with the Directive "Television Without Frontiers". The following criteria were taken into account:

- the location of the head office,
- the place where a significant part of a workforce involved in the pursuit of the television broadcasting activity operates,
- the place where decisions on program structure and contents take place,
- the setting up of its operations by a broadcaster subject to the laws of the Republic of Poland while maintaining by a broadcaster a stable and effective link with the economy of Poland.

The law will also apply, in well-defined situations, to broadcasters that avail of or use a frequency subject to a decision issued by a Polish administrative body, or avail of a satellite utilizing orbit capabilities reserved by a Polish administrative body, or make use of a station located within the territory of the Republic of Poland which sends signals to the satellite.

The draft also contains detailed provisions referring to European quotas, including a definition of "European programmes" in compliance with the Directive "Television Without Frontiers". The obligation to allocate most of the broadcasting time to European programmes has been adopted in a normative formula that will facilitate its effective observance. The term "programmes made by European producers" was reworded as "European programmes" in compliance with the aforementioned Directive. The notion of the European programme was incorporated into the concept of the independent European quota. The deadline by which it will be obligatory to give preference to most recent productions within this quota has been changed and now it is 5 years instead of 3.

The draft proposes changes that will allow foreign entities from the European Economic Area to enjoy full capital liberalization as from the 1 May 2004. The draft Amendment also proposes that by that time the share of foreign capital in Polish broadcasting companies would be raised to 49% for other foreign entities.

The draft also includes provisions on the protection of

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minors, advertising and teleshopping, as well as provisions referring to interruption of feature films and films made for television, and provides more detailed provisions on the scope of situations where according to a registration procedure retransmission shall be refused or when the registering authority shall impose a ban upon the cable network operator to retransmit a programme service, again in compliance with the requirements of the Directive.

In addition the draft embraces a set of provisions aiming at achieving compliance with the *acquis communitaire* referring to compensation by the State for the services provided in the general interest.

It is envisaged that the draft would be delivered to the Speaker of the Polish Parliament soon. ■

- **Communication released after the meeting of the Council of Ministers, available at: http://www.kprm.gov.pl/441_10329.htm**
- **Information of the Ministry of Culture on the draft Amendment to Broadcasting Act of 16 October 2003 (*"Nowelizacja ustawy o RTV"*), available at: http://www.mk.gov.pl/**

PL

FILM

CY – New Film Classification Regulations Approved

Andreas Christodoulou
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In June 2003, the House of Representatives approved Regulations issued under Section 12 of the Law 238 (I) of 2002 on Film Classification.

The main feature of the new Regulations is the introduction of a new classification system, consisting of five categories, based on criteria of language, sex and violence. The categories are as following:

1. Category (K) – Suitable for all audiences.
2. Category (12) – Not suitable for viewing by persons under the age of 12
3. Category (15) – Not suitable for viewing by persons under the age of 15
4. Category (18) – Not suitable for viewing by persons under the age of 18
5. Not classified (MK) – Films of this designation cannot be shown in public cinemas in the Republic.

Not Classified (MK) films or their promotional materials contain the following:

- Scenes offensive in a flagrant manner to the national or religious sentiments of the public;
- Scenes encouraging, directly or indirectly, the use of illicit drugs;
- Scenes encouraging, inciting, promoting as acceptable, desirable, exciting or pleasurable, acts, moves or situations unacceptable to society, such as racism or other political behaviours which seek the abolition of democracy as a political system;
- Scenes depicting paedophilic perversions, bestiality, necrophilia, sado-masochism or any form of sexual behaviour which tends to degrade human dignity;
- Realistic depiction of violent sexual acts and excessive and wanton sexual cruelty.

The MK category includes pornographic films as mentioned above.

The new Law and associated Regulations come into force after the list of members of the Film Classification Committee has been be published in the Official Government Gazette. ■

- **Regulatory Administrative Act No. 561/2003 on Film Classification Regulations, issued under Section 12 of the Film Classification Law 2002; Official Government Gazette – Annex E.E. III (I) No. 3735, 11 July 2003**
- **Law 238 (I) of 2002 on Film Classification; Official Government Gazette ref. Annex E.E. I (I), No. 3670, 31 December 2002**

EL

ES – Film Industry Subsidies Regulation

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On 7 August 2003, the Spanish Official Gazette published Order 2240/2003 that lays down the rules for the application of the Statutory Instrument 526/2002, which regulates the measures of support and promotion of the film industry and of film co-productions in Spain. As the Statutory Instrument established multiple subsidies, this Order rationalizes them and sets out the procedure for its application, as well as the procedure for obtaining certificates of Spanish nationality for films. The applicants for these grants have to be registered at the Register for Audiovisual Companies and must complete the application forms that are included in the appendix to the Order. The administrative body in charge of the control of the subsidies is the *Instituto de Cinematografía y de las Artes Audiovisuales* (the Spanish Film Institute - *ICAA*), which is attached to the Ministry of Education, Culture and Sport.

Subsidies and aids are normally granted on the basis of the cost of the film, which amounts to all the expenses necessary for its production plus the following costs:

a) repayment for the executive producer
b) costs of copies and negatives
c) financial costs and interest fees up to a maximum of 10% of the total cost
d) share in general expenses, duly justified, up to a maximum of 5%
e) dubbing or subtitling costs to any official language of Spain
f) publicity and promotion expenses up to a maximum of 30%
g) auditors costs, if an audit has been made to certify the costs for the application.

Applicants for subsidies have to provide a certificate of Spanish nationality for the film and evidence of the amount invested by the producer and the costs of the film, providing all the invoices or a certificate issued by an auditors company.

The subsidies that are established in the Statutory Instrument and in the Order are the following:

a) Amortization subsidies: 15% of the ticket income in the first 12 months of theatrical exploitation
b) Subsidies for film projects of new directors (no more than 2 films), low budget films, films of significant artistic or cultural nature, documentaries, and promotion pilot chapters of an animation series. Shooting has to start within three months following the grant
c) Subsidies for reducing the financial costs of loans
d) Subsidies to short films
e) Subsidies for the development of scripts
f) Subsidies for the distribution of films (up to 50% of the costs of copies and promotion)
g) Subsidies for the participation of films in international festivals
h) Subsidies for the organization of festivals and contests
i) Subsidies for the conservation of negatives and original carriers
j) Subsidies for theatres and technical industries

The Order provides a specific application form for every subsidy and sets out all the details and documents to be provided with the application. ■

- ***Real Decreto* (Statutory Instrument) 526/2002 of 14 June 2002, published in *BOE* (Official Gazette) of 28 June 2002, available at: http://noticias.juridicas.com/base_datos/Admin/rd526-2002.html**
- ***Orden* (Order) ECD/2240/2003 of 22 July 2003, published in *BOE* (Official Gazette) of 7 August 2003, available at: http://noticias.juridicas.com/base_datos/Admin/o2240-2003-ecd.html**

ES

GB – Report on the British Film Industry Published

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deeJgee Research/ Consultancy

On 18 September 2003, the UK Parliament published its Committee on Culture Media and Sport's Report on the British Film Industry.

The Committee reports that "[t]here is a British film industry" but that "there are longstanding chronic difficulties." However, the Committee is also of the view that "[p]ublic policy has a role to play in strengthening the industry in order to generate substantial economic rewards and important cultural benefits."

A central conclusion is that it is essential to maintain an "attractive tax regime", but that in reviewing it, "the Government should assess whether there is a case for the introduction of new terminology to assist the classification of films according to country of origin distinguishing cultural content and financial provenance."

The role of the public service broadcasters in relation to developing the film industry is also considered, for example through "increased levels of support for production and exhibition of British films". In particular, the BBC should "review its approach and level of commitment to feature film production, in consultation with the UK Film Council, given the significant comity of interests in this area." Finally, the Committee highlights the future role of the new single regulator, Ofcom, for improving the relationship between the British film industry and the public service broadcasters. The Report suggests that a mechanism would be "through the Statements of Programme Policy required from the broadcasters."

Finally, the Committee considers the issue of archiving. It recommends that the British Film Institute should support the film and television archive community, "particularly the regional archives". It also urges the development of an "overall national strategy…promoting both good curatorship and increasing accessibility". ■

● Report on the British Film Industry (HC 667), Parliamentary Committee on Culture Media and Sport, 18 September 2003, available at: http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcumeds/667/66702.htm

RELATED FIELDS OF LAW

AM – Statute on Access to Information Enacted

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On 23 October 2003, President Robert Kocharyan of Armenia signed the Statute "On Freedom of Information", adopted unanimously on 23 September 2003 by the National Assembly (parliament) of Armenia.

The Statute regulates relations in the sphere of information, determines the powers of authorities that oversee the free provision of information to the public, as well as the procedure, methods and conditions of access to information. The Statute shall be binding on government authorities, bodies of self-government, state institutions, organisations financed from the national budget, as well as so-called organisations of "public importance" and their officials (Art. 1). These bodies and officials are considered as "managers of information".

According to the Statute "managers of information" shall be obliged to publish on an annual basis a set of informational resources; in addition to that all possible changes made later on in these resources shall be published within 10 days of their acceptance (Art. 7). Publication of this information shall be done in any form accessible to the public, and whenever possible on the Internet.

In cases of formal requests for information, it shall not be necessary to give any reason for such requests (Art. 9). If a written reply to such a request consists of 10 pages or less, it shall be provided free of charge; oral and electronic replies (via Internet) are also to be provided free of charge.

The Statute comes into force 10 days after its official publication. ■

● Statute "On Freedom of Information" of 23 September 2003, available at: http://www.medialaw.ru/exussrlaw/index.htm

RU

AT – Supreme Court Ruling on Relationship Between Freedom of Expression and Copyright and Performance Protection Rights

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In a recently published decision, the *Österreichische Oberste Gerichtshof* (Austrian Supreme Court - *ÖOGH*) explained in what circumstances the right to freedom of expression justifies the infringement of copyright and performance protection rights. On the one hand, the economic interests of the author must not be harmed and, on the other, the infringement of copyright and performance protection rights must be essential to the exercise of the right to freedom of expression.

In the relevant legal dispute, a photographer had instigated proceedings against an Austrian national daily newspaper, which had published one of his photographs without his knowledge or consent. The picture was a passport photograph of a murder victim, which had been photographed by the defendant and published on the front page of its Vienna edition and inside a subsequent edition without any reference to the actual photographer. Furthermore, the defendant refused to meet the plaintiff's subsequent claim for full royalties. The resulting lawsuit demanded claims for royalties, for an injunction against further publication of the plaintiff's work and for a public apology. The first instance and appeals courts had already ruled in the plaintiff's favour.

The *ÖOGH* also dismissed the defendant's appeal as unfounded. It decided that the defendant could not rely on its fundamental right to freedom of expression, as enshrined in Article 10.1 of the ECHR, even though exercise of that right could, under certain conditions, justify an infringement of copyright and performance protection rights, such as if words or pictures were published with the aim of criticising the rightsholder and justifying that criticism. However, in the current case, the defendant's only objective had been to illustrate a crime and to draw the reader's attention to the corresponding article. This was not sufficient to justify an infringement of the photographer's rights. ■

● Ruling of the *Österreichische Oberste Gerichtshof* (Austrian Supreme Court - ÖOGH), 24 June 2003, case no.: 4Ob105/03z

DE

BG – Disagreement between Broadcasters and Collecting Society Brought to the Attention of an Independent Arbitrator

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ABBRO
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As of 1 August 2003 the members of the Bulgarian society for collective management of the copyrights of recordings' producers (PROPHON) decided to cancel all agreements with electronic media and to introduce a ban for broadcasting of music if a contract for compensating neighbouring rights is not closed by this date. Until last year producers allowed electronic media to pay for the broadcast music by advertising time in which PROFON's members promoted their catalogues.

Under the Act on Copyrights and Neighbouring Rights, the organisation of producers and performers can collectively represent and defend the interests of its members. Anyone that broadcasts music with commercial purposes is obliged to sign a contract with PROPHON. Its members include BMG through its licensee Avenue Productions, Universal Music through Virginia Records, Warner Music through Orpheus, Sony Music through Vitosha Entertainment, and EMI through Animato. The total number of recordings produced by PROPHON's so-called major members, is about 90% of the music performed by the electronic media in Bulgaria.

PROPHON demanded that all private radio stations and musical TV channels that broadcast a percentage of music of more than 60% should pay 4% of their gross annual revenue and set a fixed minimum threshold. For a local Sofia-based radio station, for example, the minimum threshold would be BGN 18,000 a year (Note: BGN 1 equals EUR 1.95583). The prices of PROPHON are 4 times higher than the prices of Musicautor - the Bulgarian authors collecting society – with which Bulgarian broadcasters have had contractual relations for more than 5 years.

In December 2002 the Bulgarian National Radio managed to close a deal with PROPHON at a relatively reasonable price – BGN 80,000 for the year 2003. The amount seems reasonable and affordable against the background of the BGN 34 million state subsidy, allocated to the BNR for 2003, and the circumstance that in return for this money the public national radio gets the catalogues of all musical companies not only for its two 24 hours national prgrammes "Horizont" and "Hristo Botev", but also for its satellite programme "Bulgaria" and for its five regional centres.

The principal financial conditions of PROPHON led to a protest by private broadcasters against the PROPHON tariff at the Commission for the Protection of Competition. A conclusion from the commission is expected to be published by the end of November 2003. ■

● **Letter of the Association of Bulgarian Broadcasters (ABBRO) to the Commission for Protection of Competition, 11 August 2003**

BG

BG – Protection Against Discrimination Act

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At the end of September 2003 Bulgaria adopted its Protection against Discrimination Act. The Act shall enter into force on 1 January 2004.

Until recently the prohibition of discrimination was proclaimed by a general rule of the Bulgarian Constitution and was provided for by several rules scattered among diverse regulations (such as the Penal Code, the Labour Code and some others). The legal provisions were designed in a way that made them barely effective. For example, there were no definitions of the existing forms of discrimination.

The new anti-discrimination act was also Bulgaria's response to the requirements of *acquis communautaire* – Directive 2000/43/EC and Directive 2000/78/EC.

The first chapter contains some general provisions. An overall prohibition of discrimination is introduced, regardless of the specific personal features that may serve as grounds for discrimination. The various features (e.g. race, sex, ethnicity, age, sexual orientation, etc.) are not exhaustive. The scope of the prohibition is wide ranging: it covers both direct and indirect discrimination, racial segregation, harassment (including sexual harassment), incitement and assistance to discrimination and on persecution because of anti-discrimination activities. Then there follow sixteen cases of affirmative action defined as non-discrimination.

The next chapter provides for protection against discrimination in the fields of labour relations, educational and professional training and in connection with the exercise of some other rights. Then the mechanisms for protection are set out. A brand new agency with wide powers – the Commission for Protection against Discrimination – is established. Several protection rules concerning the judicial procedures are introduced. In cases of alleged discrimination the burden of proof is on the defendant.

The final chapter deals with the various administrative sanctions.

There are several provisions, which, directly or indirectly, concern media activities. The prohibition of discrimination is proclaimed to be effective *erga omnes*. So it is possible that either journalists or their publishers could be held responsible for discrimination and might, therefore, run the risk of being involved mostly in acts of incitement to discrimination in their publications.

Journalists may have an important part in initiating procedures before the Commission for Protection against Discrimination. Applications from natural or artificial persons, addressed to the Commission, are among the "triggers" to start proceedings. The messages based on journalists' investigations may therefore become essential sources of information for the Commission. But it must be noted that the Commission will not examine anonymous data.

The Act permits plaintiffs, within a month after they have lodged their claims concerning discrimination, to announce this fact in the mass media and to invite other affected persons to join proceedings.

Attention should be paid to the provisions of the Act requiring all natural and artificial persons to submit on the demand of the Commission all available information concerning a given case of discrimination. Refusals to submit information are liable to administrative sanctions. This provision might conflict with Article 10 of the European Convention for Protection of Human Rights and Fundamental Freedoms, conceived as a guarantee of the confidentiality of journalists' sources of information. ■

● **Protection Against Discrimination Act (State Gazette, N 86/30/09/2003)**

BG-EN

CY – Cyprus Press Agency to Comply with State Aid Law

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Media Law Expert

In June 2003, the House of Representatives approved the Cyprus Press Agency Amendment Law of 2003 regulating state aid received annually by the national news agency, the Cyprus Press Agency (CPA - KYPE).

The new Law fully harmonises national legislation with the relevant European *acquis* and more specifically with provisions of Articles 86 and 87 of the European Community Treaty, and Directives 1980/723/EEC and 2000/52/EC (for the broadcasting sector see article in this issue).

The main provisions of this Law include:

- A precise definition of the term "general economic interest service" assigned to CPA;
- A clarification that the CPA may engage also in commercial activities provided they do not compromise the fulfillment by the Agency of the general economic interest service mission;
- A condition that the CPA keeps separate accounts for its commercial and general economic interest activities, which should be available to the public;
- The state aid granted to CPA should only cover and not exceed the cost accruing from the carrying out of the general economic interest service mission;
- The CPA will no longer be exempt from the payment of income tax;
- The auditing control of the Auditor General is extended in order to cover the use by CPA of state aid in accordance with the provisions of this Law. ■

● Law No. 55 (I) of 2003 on the Amendment Cyprus Press Agency Law (State Aid); Official Government Gazette – Annex E.E. I (1) No. 3724, 13.6.2003.

EL

DE – Chairman Must Put Up With Satirical Photomontage

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In a ruling of 30 September 2003, the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) dismissed a complaint by the former Chairman of *Deutsche Telekom AG (DTAG)*, in which the latter had applied for an injunction against the defendant, a financial magazine, concerning publication of a photomontage. The photomontage showed the plaintiff - who was still Chairman at the time - sitting on a crumbling letter "T" forming part of the *DTAG* company logo. The figure that was meant to represent the plaintiff was made up of two parts: someone else's body with the plaintiff's head, taken from a photograph. The plaintiff also claimed that, in the production of the photomontage, his facial features had been altered in a way that he considered unacceptable. He argued that, since the image showed his face in an unfavourable light, its publication breached his general personality rights (Article 2.1 in connection with Article 1.1 of the *Grundgesetz* (Basic Law – *GG*)) and it should therefore not be published.

The first instance and appeals courts both found in the plaintiff's favour.

However, in its decision, the *Bundesgerichtshof* quashed the disputed ruling and dismissed the complaint. The court held that the plaintiff should tolerate the disputed portrayal of his person as it constituted an expression of opinion, albeit a satirical one, protected by Article 5.1 of the Basic Law. It was doubtful whether the slight alteration to the plaintiff's face had breached his personality rights in any way. In any case, since a satirical picture, just like written satire, should be assessed as a whole, the individual parts of the photomontage should not be considered in isolation when judging whether it breached a fundamental right. Even if the potentially unfavourable portrayal had harmed the plaintiff's general personality rights, it should be considered reasonable, especially since the photomontage dealt with a matter of significant public interest and was meant to illustrate *DTAG's* situation at the time and the plaintiff's responsibility for it. ■

● Ruling of the BGH, 30 September 2003 – case no.: VI ZR 89/02; available at: http://www.bundesgerichtshof.de/

DE

DE – Protection of Privacy to Be Strengthened

Alexander Scheuer
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At the end of September, the *Bundesrat* (upper house of parliament) decided to table a bill that will make it a punishable offence to take photographs secretly and without permission. The *Strafgesetzbuch* (Criminal Code - *StGB*) will be amended to strengthen the protection of privacy, with a new rule added alongside the existing ban on sound recordings.

People's private lives will be protected against the unauthorised taking or broadcasting of pictures in their homes or similar places that are not directly visible to the public. According to the new para. 201a of the *StGB*, it will also be an offence to use such pictures or make them accessible to a third party. The public prosecutor will only take action if asked to do so by the victim. It will be interesting to see how this will affect the numerous TV programmes that are based on the "hidden camera" principle. The bill will now be submitted to the *Bundestag* (lower house) for further discussion. ■

● *Bundesrat* press release, 26 September 2003; available at: http://www2.bundesrat.de/aktuell/index.html

DE

DE – Constitutional Court Discusses News Agencies' Duty of Care

In a decision announced at the end of September, the *Bundesverfassungsgericht* (Federal Constitutional Court - *BVerfG*) decided not to rule on complaints filed by a news agency against injunctions imposed by the *Landgericht Hamburg* (Hamburg District Court) and the *Hanseatische Oberlandesgericht* (Hanseatic Appeal Court).

The Constitutional Court can decide not to rule if the complaint does not raise any issues of fundamental constitutional relevance or if it is not indispensable to the plaintiff's ability to assert a fundamental right because it has no chance of being upheld. The Constitutional Court only examines previous civil court decisions to see whether they have interpreted and applied legal provisions on the basis of a misjudgement of the plaintiff's fundamental position; that was not the case in this instance.

In its reporting of the 2002 *Bundestag* election campaign, the news agency had conducted an interview during which an image consultant talked about the

image of the top candidates of the two main German parties. The consultant claimed, amongst other things, that the current head of government dyed his hair, which was detrimental to his credibility with the people. Partly as a result of reports carried in the audiovisual and print media in Germany and elsewhere concerning the legal steps taken by the Federal Chancellor against this claim, the image consultant's views were reported in numerous media outlets. The news agency lost the case. The decisive factor was the extent to which the agency was responsible for checking the substance of specific comments that might affect an individual's personality rights. Disparaging comments must not be reported if they are untrue or if they cannot be proven to be true. If, as in the present case, the comments of a third party are reported, responsibility for those comments depends on whether certain precautions are taken. The plaintiff made no attempt to substantiate the comments and its actions could not be justified by the claim that the report had to be released to the media without delay. According to the civil courts, the topicality of the report was not sufficient to justify the urgency with which it was released.

Neither the specialist courts nor the Constitutional Court agreed with the plaintiff's argument that, as a news agency, it did not have to meet such high standards of care: in particular, the courts stated that the fact that the role of agencies had become more prominent recently, with individual reports being distributed by some media without further editing, should be taken into account. ■

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● **Ruling of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 26 August 2003, case no. 1 BvR 2243/02; available at: http://www.bverfg.de/entscheidungen/rk2003**

DE

DE – New Telecommunications Bill Tabled

On 15 October 2003 the federal government agreed on a bill designed to bring the *Telekommunikationsgesetz* (Telecommunications Act - *TKG*) into line with EC Directives.

The most interesting provisions from a broadcasting point of view, and therefore the most important for the audiovisual sector, are those that deal with providers' access to transmission channels. A key feature of the new regulations is that broadcasters' wishes concerning fees and supervision will be taken into account. The format of the corresponding rules is also under discussion. According to the bill, the *Regulierungsbehörde für Telekommunikation und Post* (regulatory body for telecommunications and post - *RegTP*) will be able to force any electronic communications network operator has a considerable market share to guarantee access to a certain part of the infrastructure.

Under the current law, service providers have been entitled to direct access, for example in relation to broadband cable networks; this has meant that providers have had to be guaranteed use under open, non-discriminatory conditions. Now, in view of the huge importance of broadcasters' access to transmission channels, which is also relevant to constitutional law, an ex ante remuneration rule is being introduced. At the same time, the rights of the German *Bundesländer* will also have to be safeguarded, since they are responsible for broadcasting legislation.

Despite the proceedings instigated against Germany for breaching the Treaty by failing to implement the legal framework for electronic communications networks and services by July 2003, the legislation should be passed in late spring 2004. ■

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● **Telecommunications Bill, 15 October 2003, available at: http://www.bmwa.bund.de/Navigation/Service/Gesetze/rechtsgrundlagen-telekommunikationspolitik,did=26500.html**

DE

DE – Age Verification System Standards for Youth Protection

The *Kommission für Jugendmedienschutz* (Commission for Youth Protection in the Media - *KJM*) has laid down standards for age verification systems designed to protect minors in the telemedia sector in accordance with the rules contained in the *Jugendmedienschutz-Staatsvertrag* (Inter-State Agreement on Youth Protection in the Media - *JMStV*).

Under Article 4 *JMStV*, the broadcasting of pornography is totally forbidden. However, pornography is admissible in telemedia if the provider ensures that it can only be accessed by adults (restricted user group). Under the youth protection reforms carried out in Germany in April this year (see IRIS 2002-7: 13 and IRIS 2002-9: 15), the *KJM* is now responsible for monitoring compliance with the provisions of the *JMStV*. Age verification systems designed to meet the requirements of Art. 4 *JMStV* may be submitted to the *KJM* for checking before they are placed on the market. Although the *KJM's* decision does not imply official recognition of the system concerned, it does give the company a degree of legal certainty. If the age verification system functions in practice as it did in theory when presented to the *KJM*, the provider can be sure that it restricts use as required by Art. 4.2.2 *JMStV* and that the *KJM* will not query the system when it monitors its implementation.

In this connection, on 24 June 2003 the *KJM* reached a decision in principle that a restricted user group would be produced if two conditions were met: firstly, the user's age must be checked in person (face-to-face) and secondly, there must be some form of authentication process each time access is required in order to prevent access data from being passed on to minors. The *KJM* applied these principles for the first time on 24 September 2003, when it decided that two of the age verification systems it had received met the relevant criteria.

The first was the so-called "X-Check" system devised by *Coolspot AG*, which involves one-off customer identification using a procedure administered by *Deutsche Post AG*. The customer's age is verified by post office staff by means of the person's identity card. Then each time the customer requires access to the service, authentication is carried out by a mainframe computer, for which the customer needs their own software, hardware (ID-chip) and a PIN.

The second approved system was submitted by *Vodafone D2*. In this case, the customer's age is verified when they sign an agreement in a *Vodafone D2* shop or an associated store. Each time access is required, an individualised *Adult-PIN* is used in connection with a hardware component (SIM-card). ■

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● ***KJM* press releases, available at http://www.alm.de/index2.htm**

DE

FR – Legitimacy of Use of Technical Systems on CDs and DVDs

In view of the increasing quantity of music and films downloaded and pirated using the Internet, the majors are increasingly including anti-copy systems in the CDs they put on sale. Four court cases have been brought in France against this practice. Consumer associations consider that these protected CDs totally prevent copying, which contradicts the French exception to private copyright included in Article L.122-5 of the Intellectual Property Code.

Two decisions have already been delivered in these cases by the regional court of Nanterre. In both cases the problem was the same. The applicants had purchased CDs, on the packaging of which it was stated that the CD contained a technical system limiting the possibility of copying. The CDs in question worked properly on some supports, but were inaudible on the in-car systems of both purchasers.

In the first decision on 24 June 2003, the court found that the fact of fitting a CD with an anti-copy system could constitute deception within the meaning of Article L.213-1 of the Consumer Code, since there was no specific indication of the effects such a system could have.

In the second judgment, on 2 September 2003, the court found that the technical systems intended to limit the possibility of copying the CD constituted a latent defect since they prevented the owner of the CD listening to it on all possible supports, thereby restricting its use.

The association *Consommation Logement et Cadre de Vie* for its part has suffered a set-back. The regional court of Paris rejected the complaint it had brought against BMG and Sony on 2 October for "failure to inform the consumer". The association also denounced their anti-copy systems, which could prevent CDs working on a car radio. The judge held that the association had not produced sufficient evidence in support of its claims and therefore rejected its arguments.

In the light of these decisions, it would appear that it is not the existence of the technical systems that is at question but their consequences and the way in which they are presented.

At the same time, a bill to prohibit the use of technical measures to protect CDs and DVDs that result in users being deprived of the right to make a copy for private use was tabled at the National Assembly on 10 September. ■

Clélia Zerah
Legipresse

- **Regional court of 2003, the association "Consommation Logement Cadre de Vie" (CLCV) v. the company EMI Music France**
- **Regional court of Nanterre (6th chamber), 2 September 2003, Françoise Marc of the union of consumers "Que choisir" v. the company EMI Music France and the company Auchan France**
- **Regional court of Paris, 2 October 2003, CVCL v. BMG, Sony**
- **Bill to prohibit the use of technical measures to protect CDs and DVDs that result in users being deprived of the right to make a copy for private use, tabled at the National Assembly on 10 September 2003 by Mr Didier Mathus MP and members of the Socialist Group.**

FR

NL – Judicial Ban on Broadcast and Broadening of Definition of "Portrait"

On 2 May 2003, the *Hoge Raad der Nederlanden* (Dutch Supreme Court – *HR*) adopted a decision in the so-called *Breekijzer* case (see IRIS 2000-2: 7), in which it upheld a court decision to impose a ban on a broadcast and broadened the definition of "portrait" under the *Auteurswet* (Dutch Copyright Act – *Aw*).

Breekijzer is a television programme that claims to help individual consumers in their disputes with companies or governments by using a "hold-up" method, in which the presenter visits companies, and films and interviews people representing the company without their prior consent. In this case, an insurance company, *Inter Partner Assistance* (*IPA*), had requested the *Rechtbank Amsterdam* (Court of Amsterdam – *Rb*) to impose a ban on an intended broadcast of the programme and the Court had granted this. *Breekijzer* appealed this decision, stating that a judicial ban on a broadcast is contrary to Article 10 of the European Convention on Human Rights (ECHR) and Article 7 *Grondwet* (Dutch Constitution – *Gw*), which protects freedom of expression and prohibits censorship. The *Gerechtshof Amsterdam* (Amsterdam Court of Appeal – *Hof*) rejected *Breekijzer's* appeal and confirmed the Court of Amsterdam's decision. The case was then brought before the Supreme Court, which has now come to the conclusion that there was no violation of Article 10 ECHR since the restriction was prescribed by law, namely Article 3:296 *Burgerlijk Wetboek* (Dutch Civil Code), which deals with the imposition by courts of obligations to act or to refrain from acting. The Supreme Court also held that these restrictions were necessary in a democratic society for the protection of the reputation of *IPA*, since the behaviour in *Breekijzer* was considered illegitimate and damaged *IPA*'s reputation.

With regard to Article 7 of the Constitution, the Supreme Court found that a judicial ban on a broadcast is not incompatible with this provision, even though the article itself does not specify any possibility for restrictions. According to the Supreme Court, Article 7 of the Constitution allows a judge to prohibit illegitimate behaviour and expression, for the purposes of effective legal protection.

The broadcast ban was partly based on a supposed infringement of the portrait right of the director of *IPA*. *Breekijzer's* claim that a portrait right cannot be used to prohibit television broadcasting was dismissed by the Supreme Court, since the text of the law gives no support to this claim. *Breekijzer* also claimed that, since they had made the face of the director partly unrecognisable, there was no infringement of the portrait right because there was no "portrait", in the sense of Article 21 of the Dutch Copyright Act. The Supreme Court dismissed this claim because the remaining picture could still be a portrait, in particular if it could reveal the identity of the director. By this decision the Supreme Court thus gives a broader definition of a portrait, which was previously limited to the face of a person. If the identity of a person is recognisable from the remaining picture, this picture can still constitute a portrait. ■

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- ***Hoge Raad der Nederlanden* (Dutch Supreme Court), Judgment of 2 May 2003, Case C01/240 HR, available at: http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=46981**

NL

RO – Guidelines on Correct Public Information

In Decision no. 274 of 25 September 2003, the *Consiliul Național al Audiovizualului* (the supervisory body for electronic media in Romania - *CNA*) set out a series of guidelines on the correct handling and dissemination of information aimed at the public. The principles that broadcasters in Romania will have to follow include the obligations:

- to promote the free formation of opinion;
- to provide balanced reporting by offering different, contrasting points of view;
- to distinguish clearly between opinion and objective reporting of facts;
- to avoid all forms of discrimination on grounds of race, religion, nationality, gender, sexual orientation or ethnic origin.

In order to ensure public information is as accurate as possible, broadcasters are advised to edit their information very thoroughly, carefully checking the sources and balance of reports and giving details of sources. In particular in the case of natural disasters or states of emergency, the *CNA* recommends that the electronic media carefully check the information gathered from their own sources and compare it with official statements. If there are any discrepancies, the information released by official legal sources, with precise details of those sources, should be broadcast alongside the provider's own information. If possible, broadcasters should avoid spreading panic among the people by giving out unverified information. As far as official statements regarding natural disasters and states of emergency are concerned, these should be broadcast in full and as a priority.

Other guidelines suggest that the names of accident victims should not be divulged until they have been officially confirmed, that shocking pictures should not be shown repetitively and that there should be no speculation in connection with such events.

The individual broadcaster's logo should appear on the screen at all times except during advertisements. In addition, the world "live" should appear during live broadcasts; the word "repeat" should appear during programmes, including news bulletins, which are repeated. In order to avoid confusion, the use of old footage should be denoted by the words "archive pictures".

Breaches of the rules set out in the *CNA* decision will be subject to fines in accordance with Article 91 of the *Legea audiovizualului* (Romanian Audiovisual Act Nr. 504/2002) or public censure in the sense of Decision no. 52/2003. ■

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● ***Decizia CNA nr. 274 din 25 septembrie 2003 privind asigurarea informării corecte a opiniei publice* (CNA decision no. 274 of 25 September 2003), *Monitorul Oficial al României* No. 699 of 6 October 2003**

RO

PUBLICATIONS

Sterling, J.A.L.
World Copyright Law (new 2nd edition),
Great Britain, London
Sweet and Maxwell, 2003
ISBN 0421 790709

Garzaniti, L.
Telecommunications, Broadcasting and the Internet
Great Britain, London
Sweet and Maxwell, 2003

Gersdorf, H.
Grundzüge des Rundfunkrechts
Deutschland, München
Verlag C.H. Beck, 2003
ISBN: 3-406-49941-4

Tolkmitt, J. Ch.
Tauschgerechtigkeit im kollektiven Urheberrecht
Deutschland, Baden Baden
Nomos Verlag, 2003
ISBN: 3-8329-0379-8

Vierhaus, B. E.
Der Übergang von der analogen zur digitalen terrestrischen Fernsehübertragung
Deutschland, Baden Baden
Nomos Verlag, 2003
ISBN: 3-8329-0370-4

Burian, M.
Audiovisuelle Werke im russischen und deutschen Urheberrecht
Deutschland, Baden Baden
Nomos Verlag, 2003
ISBN: 3-7890-8376-3

Von Diemar, U.
Die digitale Kopie zum privaten Gebrauch
Deutschland, Münster
LIT-Verlag, 2002
ISBN : 3-8258-6303-4

Peters, B.
Fernseh- und Filmproduktion, Rechtshandbuch
Deutschland, Baden Baden
Nomos Verlag, 2003
ISBN: 3-7890-8138-8

Dreier, Th., Schulze, G.
Urheberrechtsgesetz
Deutschland, München
Verlag C.H. Beck, 2003
ISBN: 3-406-51260-7

Bernault, C.
La propriété littéraire et artistique appliquée à l'audiovisuel
LGDJ, 2003

Bernault, C., Soreau, A.
Contrefaçon de logiciels, les solutions juridiques
Editions des Parques, 2003

Mallet-Poujol, N.
La création multimédia et le droit
Litec, 2003