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OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

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ARTICLE 19

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INTERNATIONAL

UNITED NATIONS

First Phase of the World Summit on the Information Society

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The first of the two phases of the World Summit on the Information Society (WSIS – see IRIS 2002-2: 3, IRIS 2003-3: 4, IRIS 2003-6: 2 and IRIS 2003-7: 5) took place from 10 to 12 December 2003 in Geneva.

The objective of the WSIS is to unite governments, the private business sector, civil society and non-governmental organizations, in order to build a global Information Society that must bridge the gap between poor and rich countries. The goals and proposed initiatives of the WSIS are incorporated in a Declaration of Principles and Plan of Action, which were adopted at the Geneva Summit.

The Declaration of Principles advocates the creation of a people-centred, inclusive and development-oriented Information Society. An essential element in this vision is the right to freedom of opinion and expression, on the basis of which everybody should be able to participate in, and benefit from, the Information Society.

Information and Communication Technologies (ICTs) provide new opportunities to attain higher levels of development, as information and communication lead to knowledge. To get people acquainted with the use of ICTs, it is not only important that they acquire the necessary skills and knowledge that is involved in ICTs, but it is also necessary to protect the users' privacy, secure the information on the network and secure the network itself.

The Plan of Action translates the vision expressed in the Declaration of Principles into concrete objectives and action lines. It contains over 140 action items concerning the promotion of ICTs and ways to offer help to countries, so that the digital divide can be overcome.

Internet governance is one of the main focal points of the WSIS. Therefore delegates agreed to set up a working group to investigate and make proposals for action on the governance of Internet, prior to the second phase of the Summit.

The media are key actors in the Information Society. A part of the Summit was dedicated to the World Media Electronic Forum (WEMF), an event that gathered together media representatives from all over the world. Broadcasters meeting at the Forum adopted a Declaration in which they stressed their vision of and contribution to the Information Society, laying down their commitment to freedom of opinion and expression, access to information, freedom and pluralism of the media and cultural diversity.

The second phase of the WSIS will take place in November 2005, in Tunis. ■

● World Summit on the Information Society, Declaration of Principles (WSIS-03/GENEVA/DOC/0004) and Plan of Action (WSIS-03/GENEVA/DOC/0005) of 12 December 2003, both available at:
http://merlin.obs.coe.int/redirect.php?id=8841
EN-FR-ES-AR-RU-ZH

● The Broadcasters' Declaration is available at:
http://merlin.obs.coe.int/redirect.php?id=8862
EN

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COUNCIL OF EUROPE

European Court of Human Rights: Case of Müslüm Gündüz v. Turkey

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In the case of Müslüm Gündüz v. Turkey, the European Court of Human Rights evaluated the necessity of a criminal conviction on the grounds of inciting the people to hatred and hostility. The applicant, in his capacity as the leader of an Islamic sect, during a TV-debate broadcast by *HBB* channel, demonstrated a profound dissatisfaction with contemporary democratic and secular institutions in Turkey by describing them as "impious". During the programme he also openly called for the introduction of the sharia. Because of these statements Müslüm Gündüz was found guilty by the state security court of incitement to hatred and hostility on the basis of a distinction based on religion. He was sentenced to two years' imprisonment.

In its judgment of 4 December 2003, the European Court of Human Rights came to the conclusion that this interference by the Turkish authorities with the applicant's right to freedom of expression violated Article 10 of the Convention. Although the applicant's conviction was prescribed by Turkish criminal law and had the protection of morals and the rights of others as well as the prevention of disorder or crime as legitimate goals, the Court was not convinced that the punishment of Müslüm Gündüz was to be considered as necessary in a democratic society. The Court observed that the applicant was invited to participate in the programme to present the sect and its non-conformist views, including the notion that democratic values were incompatible with its conception of Islam. This topic was the subject of widespread debate in the Turkish media and concerned an issue of general interest. The Court once more emphasised that Article 10 of the Convention also protects information and ideas that shock, offend and disturb. At the same time, however, there can be no doubt that expressions propagating, inciting or justifying hatred based on intolerance, including religious intolerance, do not enjoy the protection of Article 10. In the Court's view, the comments and statements of Müslüm Gündüz expressed during the lively television debate could not be regarded as a call to violence or as "hate speech" based on religious intolerance. The Court underlined that merely defending the sharia, without calling for the use of violence to establish it, cannot be regarded as "hate speech". Notwithstanding the margin of appreciation accorded to the national authorities, the Court was of the opinion that for the purposes of Article 10 there were insufficient arguments to justify the interference in the applicant's right to freedom of expression. By six votes to one the Court came to the conclusion that there had been a violation of Article 10. The Turkish Judge, M. Türmen, dissented with the majority of the Court. He was of the opinion that the statements of Müslüm Gündüz comprised "hate speech" and were offensive for the majority of the Turkish people who have chosen to live in a secular society. ■

● **Judgment by the European Court of Human Rights (First Section), Case of Müslüm Gündüz v. Turkey, Application no. 35071/97 of 4 December 2003, available at: http://merlin.obs.coe.int/redirect.php?id=32**

FR

EUROPEAN UNION

Euro-Mediterranean Ministerial Conference: Establishment of Euro-Mediterranean Foundation for the Dialogue of Cultures

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At the sixth Euro-Mediterranean Ministerial Conference, held in Naples on 2 and 3 December 2003, Foreign Affairs Ministers decided, on the basis of a proposal by the European Commission, to set up a Euro-Mediterranean Foundation for cultural dialogue. The Conference was held within the framework of the Euro-Mediterranean Partnership, which was set up in Barcelona in 1995. The Partnership, which includes the EU, its Member States and twelve Mediterranean countries, aims to establish a common Euro-Mediterranean area of peace and stability, create a free-trade area and promote understanding between cultures.

The objective of the Foundation is to promote dialogue and mutual understanding between cultures and civilisations in the Euro-Mediterranean region. The Foundation will be organised in such a way that it can function as a catalyst for initiatives. A special High-Level Advisory Group, established at the initiative of the president of the European Commission, Romano Prodi, has prepared a report in which it identifies a number of guiding principles and proposals for action, which should form the basis of the intercultural dialogue and direct the action of the Foundation. Among other things, the report stresses the role of the media in establishing this dialogue. It suggests, *inter alia*, developing courses on cultural diversity in journalism schools and film academies. It advocates educating the general viewing public by creating tele-clubs and involving young people in programme design. Also, the report wants to encourage the production and distribution of films from and about the Mediterranean. With support from the already existing Euromed Audiovisual Programme, "neighbourhood channels" should be created to link immigrant populations with their countries of origin. Also with EU co-funding, the installation of one or more multilingual unencrypted television channels on existing satellites should be supported. Lastly, the report calls for the creation of an independent media observatory, attached to the Euromed Foundation.

The Foreign Affairs Ministers at the Naples Conference have taken note of the report and expressed their support for launching the Euromed Foundation as soon as possible, thereby ensuring the necessary financial resources. ■

● **Euro-Mediterranean Conference of Ministers of Foreign Affairs (Naples, 2-3 December 2003) Presidency Conclusions, Euromed Report No 71, 5 December 2003, available at: http://merlin.obs.coe.int/redirect.php?id=8831**

● **"Dialogue Between Peoples and Cultures in the Euro-Mediterranean Area", Report by the High-Level Advisory Group Established at the Initiative of the President of the European Commission, Euromed Report No 68, 2 December 2003, available at: http://merlin.obs.coe.int/redirect.php?id=8833**

EN-FR

Council of the European Union: Directive on Re-use of Public Sector Information Adopted

On 17 November 2003, the European Parliament and the Council adopted the Directive on the re-use of public sector information (for the Commission's proposal of the Directive see IRIS 2002-7: 6). The Directive was published in the Official Journal of the European Union on 31 December 2003.

The European public sector produces information that has great economic and social value both to individuals

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and to the Internal Market. This information can constitute key input for the development of new digital content products and services. The general principle of the Directive is that Member States must ensure that, where public sector bodies allow the re-use of documents held by them, these documents shall be re-usable for commercial and non-commercial purposes in accordance with the conditions set out in the Directive and, where possible, made available through electronic means. Public sector bodies may impose conditions for re-use of documents, preferably through a licence, as long as this is done on a non-discriminatory basis.

The Member States must transpose the Directive into their national legislation by 1 July 2005. ■

● **Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, Official Journal of the European Union L 345/90, 31 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8838

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

European Commission: Decision on State Financing of Television in France

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On 10 December 2003, the European Commission reached a decision in its investigation regarding the *ad hoc* public financial assistance (consisting of investment grants and capital contributions) granted by the French government to the public broadcasters France 2 and France 3, between 1988 and 1994 (see IRIS 1999-8: 5). The Commission has concluded that the aid is compatible with the common market, given that it was limited to compensation of the costs incurred by the broadcasters in the fulfilment of their public service mission and that no distortion of competition on the commercial market for advertising could be established.

The case was initiated in 1993, when the private broadcaster TF1 lodged a complaint with the Commission against the financing scheme of France 2 and France 3, alleging, *inter alia*, that the licence fee and other *ad hoc* public financing measures granted to the two broadcasters constituted illegal State aid. In June 1999, the Commission was condemned by the Court of First Instance for failing to reach a decision in this case within a reasonable period of time. Having already enjoined France to provide all the information necessary to assess the nature of the aid in question (see IRIS 1999-3: 4), in July 1999 the Commission opened a formal investigation procedure under Article 88(2) EC Treaty in respect of the *ad hoc* financing measures, which it considered to be "new" aid (i.e. introduced after the entry into force of the Treaty).

As the licence fee, on the other hand, predates the entry into force of the Treaty, the Commission is examining this under Article 88(1) EC Treaty, which sets out the procedure to be followed for "existing" aids. In accordance with this procedure, the Commission has now sent a letter to France setting out its preliminary view on how financing of public broadcasters can be made more transparent and suggesting safeguards to ensure that State financing does not exceed the cost of the broadcasters' public service obligations.

The present decision is in line with the decisions adopted by the Commission in October 2003 concerning the financing of public broadcasters in Italy and Portugal (see IRIS 2003-10: 4). ■

● **"Public financing of television in France between 1988 and 1994 proportional to the cost of its public service obligations", Press Release of the European Commission IP/03/1686, 10 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8843

DE-EN-FR

European Commission: Further Enforcement Action Concerning Electronic Communications Framework

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In December 2003, the European Commission followed up on the infringement proceedings against those Member States that have still not complied with their obligations to transpose the provisions of the new regulatory framework for electronic communications into their national legislation (see IRIS 2003-10: 5), by sending Reasoned Opinions to those Member States. The infringement proceeding against Spain has been closed, as Spain has now notified the Commission of its transposition measures. Those Member States that will not comply with their notification requirements within two months will be referred to the European Court of Justice.

The Commission also launched infringement proceedings against Belgium, Finland, France, Germany, Greece, Luxembourg, the Netherlands, Portugal, and Sweden for failure to notify transposition measures in relation to the e-Privacy Directive (2002/58/EC). This directive should have been incorporated into national law by 31 October 2003.

In its Ninth Report on the Implementation of the EU Electronic Communications Regulatory Package the Commission stressed the importance of full, effective and timely transposition of the EU legislation in each country for the proper functioning of the single market as a whole. ■

● **"Electronic Communications: Commission takes further step in enforcement action against seven Member States", Press Release of the European Commission IP/03/1750, 17 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8821

DE-EL-EN-FR-NL-PT

● **Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, European Electronic Communications Regulation and Markets 2003, "Report on the Implementation of the EU Electronic Communications Regulatory Package", COM (2003) 715 final, 19 November 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8824

DE-EN-FR

European Commission: Provisional Agreement on Media Rights to English Premier League

On 16 December 2003, the European Commission announced that it had reached provisional agreements with the Football Association Premier League (FAPL) and the main UK pay-TV operator BSkyB as regards the media rights to the UK Premier League.

The Commission commenced its investigation into the joint selling of media rights to Premier League matches in June 2001, and in December 2002 sent a Statement of Objections to the FAPL stating that its selling arrangements were anti-competitive as they eliminated competition between broadcasters and limited the media coverage of matches to the detriment of fans (see IRIS 2003-2: 5).

The Commission notes that some improvements already occurred in the new tendering process for the rights, which was concluded last summer with the acquisition of the rights once again by BSkyB (which has had for a number of years exclusive coverage of the matches). In general, there has been a significant increase in the

number of rights that have been made available. For instance, the number of matches broadcast live in the UK will increase from 106 to 138 per season. Also, the rights for delivery via mobile phones, Internet rights and club television rights have all been improved.

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● "Commission reaches provisional agreement with FA Premier League and BSkyB over football rights", Press Release of the European Commission IP/03/1748 of 16 December 2003, available at:
http://merlin.obs.coe.int/redirect.php?id=8846
DE-FR-EN-ES-IT-PT

The agreements reached in December will bring further changes, which will take place in two stages. First of all, BskyB has agreed, starting from the 2004-2005 season, to offer to sublicence to another broadcaster up to eight top Premier League matches per season. Secondly, the FAPL has agreed to introduce a new system for the sale of the rights, which will be put into effect when the rights are next tendered in 2006. Under the new system, balanced packages of matches will be created and it will not be possible for one broadcaster to buy all the packages. Thus, at least two broadcasters will have access to the rights to live Premier League matches. The conduct of the auctions will be monitored jointly by the Commission and the Premier League to ensure that no potential competitors are excluded.

As a result of these arrangements, free-to-air television will for the first time have a real opportunity to broadcast live Premier league matches. ■

European Commission: Clearance of Agreements regarding Satellite Pay-TV Distribution in the Nordic Region

The European Commission has decided to exempt from the application of EU competition rules, for a period of 5 years, a number of agreements between Canal+ and the Nordic media and telecoms operator Telenor. The agreements provide for the exclusive satellite distribution via Canal Digital (Telenor's direct-to-home satellite pay-TV platform) of the pay-TV premium content channels of Canal+ Nordic (a subsidiary of Groupe Canal+).

Canal Digital was originally run as a joint venture by Telenor and Canal+ Nordic (with each party holding 50 % of the shares). In 2001, Canal+ Nordic sold its entire shareholding in the joint venture to Telenor. The exclusive distribution agreements were concluded at the time of the sale so as to ensure the continuity of Canal Digital's pay-TV services.

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● Commission clears deal between Telenor and Canal+ regarding Nordic satellite pay-TV distribution", Press Release of the European Commission IP/04/2 of 5 January 2004, available at:
http://merlin.obs.coe.int/redirect.php?id=8851
DA-DE-EN-FI-FR-SV

In the form in which they were initially notified, the agreements raised certain competition concerns. The parties however subsequently agreed to shorten the duration of their exclusivity and non-compete arrangements, which led the Commission to adopt a clearance decision. The Commission came to the conclusion that the benefits brought about by the agreements significantly outweighed their restrictive effects. Indeed the agreements will in the short-term permit the maintainence of competition with the other existing Nordic satellite pay-TV operator, MTG/Viasat, while maintaining the possibility for potential competitors to enter the Nordic pay-TV market in the mid and long term. This should ensure that end-consumers benefit from competitive prices, enhanced digital pay-TV services and new decoder technology at a low cost. ■

European Commission: Infringement Proceedings regarding Copyright Laws

The European Commission is pursuing infringement proceedings against a number of Member States for their failure to implement parts of EU copyright legislation.

As regards the implementation of the Directive on copyright and related rights in the Information Society (see IRIS 2003-8: 6), the Commission has now referred to the European Court of Justice the Member States which have still not notified it of national transposition measures (i.e. Belgium, Finland, France, Luxembourg, the Netherlands, Portugal, Spain, Sweden), as well as the UK because its national law does not apply to the territory of Gibraltar. While Ireland also still has to fully implement the Directive, it was not referred to the Court because its copyright law, which was adopted on the basis of an earlier draft of the Directive, substantially complies with the Directive and requires only minor adjustments.

The Commission has also now opened infringement proceedings against six Member States relating to their failure to properly implement into national law the public lending right as set out in the Directive on the Rental and Lending Right and on Certain Related Rights (92/100/EEC). The Directive provides for the granting of an exclusive right to authors and other rightsholders to prohibit or authorise the public lending of their works or other protected subject matter. It however also provides for the possibility for Member States to replace the exclusive lending right with a remuneration right (at least for authors) and to even exempt certain establishments from paying the remuneration. The Commission had already indicated in a report adopted in 2002, that the application of the right varied significantly between Member States and that some States still had to correctly implement the Directive (see IRIS 2002-9: 6). It is now taking action against Ireland, Italy, Spain and Portugal because the laws of these States exempt all lending establishments from paying remuneration to rightsholders, which results in the public lending right not being applied at all. It is also moving against Luxembourg which has failed to implement the public lending right and against France, which although it has adopted a law on the right, has not yet implemented the related implementing decrees (infringement proceedings have also already been pursued against Belgium – see IRIS 2002-3: 5).

The Commission has also opened a separate infringement procedure against Portugal relating to its implementation of the commercial rental right. Portugal has added video producers to the exhaustive list of rightsholders prescribed by the Directive (which explicitly refers to "the producer of the first fixation" of films) and the Commission believes that "the Portuguese law introduces an element which is likely to interfere with the objective of harmonisation pursued by the Directive".

Finally, the Commission has asked the Court of Justice to impose a fine on Ireland for its failure to comply with the Court's judgment of 19 March 2002 requiring it to ratify the 1971 Paris Act (see IRIS 2003-8: 6). ■

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● "Internal Market: Commission acts to ensure eleven Member States implement EU laws", Press Release of the European Commission IP/03/1752 of 17 December 2003, available at:
http://merlin.obs.coe.int/redirect.php?id=8854
DE-EL-EN-ES-FI-FR-NL-PT-SV

● "Copyright: Commission opens infringement procedures against six Member States over public lending rights and commercial rental rights", Press Release of the European Commission IP/04/60 of 16 January 2004, available at:
http://merlin.obs.coe.int/redirect.php?id=8857
DE-EN-ES-FR-IT-PT

European Commission: Second Evaluation Report on Protection of Minors and Human Dignity

On 12 December 2003 the European Commission adopted its second evaluation report on the application of the Council Recommendation on the protection of minors and human dignity of 24 September 1998 (see IRIS 1998-10: 5). The Recommendation calls for the establishment, through cooperation between all the parties concerned (industry, public authorities, consumers) of national self-regulatory frameworks aimed at enhancing the protection of minors and human dignity in the broadcasting and Internet sectors, as a supplement to the relevant regulatory frameworks.

The first evaluation report, adopted by the Commission in 2001, showed that the Recommendation was already being implemented quite successfully (see IRIS 2001-5: 4). The second report now looks at what progress has been made since 2000, based on the replies given by the Member States and the accession countries to a questionnaire prepared by the Commission.

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Despite the fact that the application of the Recommendation by the Member States and the accession countries is still heterogeneous, the report indicates that the developments are on the whole, positive. There has been a significant increase in the number of codes of conduct and hotlines and in most Member States campaigns have been launched to encourage safer use of the Internet. The report notes, however, that the measures concerning the protection of minors in the accession countries appear to be "less far reaching" than in the Member States. Also, measures relating to UMTS and chat groups are "still quite abstract or left to self-regulation" in the majority of Member States and accession countries.

As regards broadcasting, the report notes that although self- or co-regulation is still less developed in this sector than for the Internet, existing systems appear to be working well. The involvement of consumer associations and other interested parties in the elaboration of codes of conduct and other self-regulatory initiatives should however be improved.

In light of the new challenges brought by technological developments and on the basis of the input received during the public consultation concerning the Television without Frontiers Directive (see IRIS 2004-1: 6), the Commission intends to propose an update of the Recommendation during the first quarter of 2004. The update could cover the following issues: the right of reply (as a first step towards a right of reply applicable to all media); media literacy; measures against discrimination on the grounds of race, sex or nationality in all online media; and harmonisation of descriptive symbols for the purposes of rating (although the rating of programmes should continue to be carried out at Member State level) ■

● **Second evaluation report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, COM (2003) 776 final, Brussels, 12 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8866

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

European Commission: Positive Impact of E-commerce Directive

A report published recently by the European Commission on the application of the "E-Commerce Directive" (Directive 2001/31/EC – see IRIS 2000-5: 3) points to the success of the Directive in providing a sound legal framework for information society services in the Internal Market, creating the conditions for e-commerce to take off in the EU. Although currently e-commerce represents only a small part of retail sales in Europe, it is expected to grow significantly in the coming years.

The report outlines the current state of transposition of the Directive and analyses how its various provisions are being applied in the Member States. A list of all national measures transposing the Directive is included in an annex to the report (only three Member States still have to implement the Directive: France, the Netherlands and Portugal).

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The report concludes that a revision of the Directive would, at this stage, be premature but that the frequent new developments in e-commerce require active monitoring by the Commission of the application of the Directive. In this regard, the notification system of Directive 98/34/EC, which obliges Member States to notify draft regulations governing on-line services (see IRIS 1998-8: 3 and IRIS 1998-1: 3), will play an important role in ensuring that no national rules incompatible with the Directive are adopted (recently the Council has also approved the accession of the EU to the Council of Europe's Convention on information and legal co-operation concerning "Information Society Services", which is modelled on the current EU notification system). The Commission will furthermore concentrate on: improving administrative co-operation between Member States; collecting information on how the Directive works in practice; raising awareness among business and citizens; monitoring policy developments in order to identify possible needs for additional Community action; and strengthening international co-operation in order to develop international rules on matters such as the liability of Internet intermediaries and the procedures for removing illegal content. ■

● **"First Report on the application of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)", Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, COM (2003) 702 final, 21 November 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8867

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

ARTICLE 19

New Declaration by Specialised Mandates for Freedom of Expression

Facilitated by ARTICLE 19 – Global Campaign for Free Expression, the specialised mandates for promoting freedom of expression of three international organisations, *viz.* the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, recently adopted a joint declaration. It addresses three broad themes: regulation of the media; restrictions on journalists and the investigation of corruption.

Concerning the first of these, the Joint Declaration states that all public bodies exercising formal regulatory powers over the media should be insulated from political, financial and other types of interference. Qualitative differences between various sectors of the media (e.g. print, broadcasting and (particularly, owing to its "very special

features") the Internet) should be given due consideration in regulatory matters. As regards broadcasting, the allocation of frequencies ought to be democratic in character and guarantee "equitable opportunity of access". Furthermore, broadcasters should not be subjected to additional registration requirements over and above the requirement to obtain a broadcasting licence. The practice of obliging media outlets by law to carry messages from political figures is criticised and the problematic nature of content restrictions is also highlighted.

The second section opposes licensing and registration requirements for individual journalists, as well as legal restrictions on who may practise journalism. It is stated that accreditation schemes are only appropriate where necessary to grant privileged access to certain places and/or events. Moreover, a number of criteria should apply: such systems should be overseen by independent bodies; decisions should be implemented through fair and transparent processes and be based on clear and non-discriminatory criteria which have been published in advance.

The third section states that media workers involved in the investigation of corruption or wrongdoing "should not be targeted for legal or other harassment" and that investigative journalists should receive appropriate backing from media owners.

This Joint Declaration is not the first of its kind; previous such declarations were issued in 1999 (on a wide range of themes), 2000 (on censorship by killing and defamation), 2001 (on countering terror; broadcasting, and the Internet) and 2002 (on freedom of expression and the administration of justice; commercialisation and freedom of expression, and criminal defamation). A Joint Statement on Racism and the Media was also issued by the three specialised mandates in advance of the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001 (see IRIS 2002-1: 3). ■

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● **Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 18 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8864

EN

NATIONAL

CH – New Federal Law on Digital Signatures Adopted

Electronic signatures are to be placed on an equal footing with handwritten signatures. Accordingly, in future, it will be possible to conclude contracts for which the law requires a handwritten signature via the electronic media. On 2 December 2003 the Swiss Federal Assembly passed the *Bundesgesetz über die elektronische Signatur* (the Electronic Signatures Act), which is due to come into force in early 2005.

The new law is intended to replace the *Verordnung über Dienste der elektronischen Zertifizierung* (Decree on Electronic Certification Services), which has applied since 1 May 2000. This decree formed the basis for the voluntary recognition of suppliers of certification services. Certification services consist of the generation of private keys and the administration of generally accessible public keys (certificates). A document signed in accordance with the certification services decree does not, however, currently satisfy the requirements of the law of obligations concerning documents in writing.

In future, with the introduction of the new law and the change in the law of obligations associated with it, electronic signatures will have the same legal status as handwritten ones if the electronic signature is based on a certificate from a recognised supplier of certification services. This will make it possible to use the electronic media to conclude contracts for which a traditional handwritten signature has been necessary up until now.

The Electronic Signatures Act sets the conditions for the recognition of suppliers of certification services as well as establishing their liability. In the event of a claim, however, signature key holders are required only to demonstrate convincingly (not prove) that they have kept the key in such a way that use by an unauthorised third party can be ruled out. Persons who fail to take sufficient care with their key are liable for damage caused by third parties who have relied on the valid certificate.

The new law is limited for the most part to questions of e-commerce. However, it also lays a legal foundation for electronic communications with the authorities (or e-government) in the private law field, with the result for instance that in future it will be possible to communicate electronically with the register of companies. Details will be settled by the cabinet in a decree. ■

Oliver Sidler
Medialex

● ***Bundesgesetz über Zertifizierungsdienste im Bereich der elektronischen Signatur* (*Bundesgesetz über die elektronische Signatur, ZertES*) (Federal Act on Certification Services in the Area of Electronic Signatures, Electronic Signatures Act) of 19 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8766 (DE)
http://merlin.obs.coe.int/redirect.php?id=8767 (FR)

DE-FR-IT

DE – Is the Confiscation of Advertising Revenue Unconstitutional?

In an interlocutory judgment of 13 November 2003 the Berlin *Verwaltungsgericht* (Administrative Court) held, in proceedings concerning the confiscation of advertising revenue derived from impugned television programmes, that section 63, paragraph 3 of the *Medienstaatsvertrag Berlin-Brandenburg* (the Berlin-Brandenburg Agreement on the Media – *MstV*) was unconstitutional.

The subject of the statement of facts on which the decision was based was a television broadcaster's contributions to a programme in which unannounced visitors rang on people's doorbells at night. The occupiers of the house were addressed by name and filmed as they opened their door. In a decision of 27 June 2003, the director of the relevant regulatory body, the *Landesmedienanstalt Berlin-Brandenburg* (the Berlin-Brandenburg Regional Media Authority – *MABB)*, prohibited certain transmissions on grounds of violations of personality rights and asked the broadcaster to provide the necessary information for the transfer of the advertising revenue obtained through the programme. In its complaint, the broadcaster objected, among other things, to the request for information.

Under section 63, paragraph 3, first sentence of the *MStV,* broadcasters can be instructed to transfer fees obtained through advertising in connection with the impugned programme to the Regional Media Authority. According to the second sentence of this section, the broadcaster is required to provide the regulatory body

with the necessary details for this purpose. The Court held that section 63, paragraph 3 of the *MStV* was unconstitutional because it breached the provisions on concurrent legislation in Article 74, paragraph 1.1 and Article 72, paragraph 1 of the Basic Law. By dealing with the confiscation of property in the relevant federal laws, the federation had made exclusive use of its concurrent right to legislate in this area, with the result that there was no scope for any further-reaching provision at *Land* level – such as that of section 63, paragraph 3 of the *MstV*. In the case both of section 63, paragraph 3 of the *MstV* and of the federal regulations, what was at issue was the confiscation of items obtained by means of illegal conduct. In both cases, these were measures which could be situated in the criminal law field. As to the question whether section 63, paragraph 3 was in conformity with the Basic Law, that would depend on the final ruling, as the disputed decisions of the *MABB* were lawful in all other respects. Consequently, in its interlocutory judgment, the Court stated its intention to stay the proceedings and refer the matter to the *Bundesverfassungsgericht* (Federal Constitutional Court). ■

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● **Judgment of the *VG Berlin* (Berlin Administrative Court) of 13 November 2003, Case no. VG 27 A 9.03**

DE

DE – Decision on the Transmission of Musical Pieces

In a decision of 7 October 2003 the Cologne *Oberverwaltungsgericht* (Administrative Court of Appeal) dismissed a complaint concerning the transmission of pieces of music by public radio broadcasters.

The Court found that artists do not have any basic right to have musical pieces interpreted, composed or arranged by them broadcast on the radio.

The plaintiff, who plays light music, had already sent the broadcasting company, *Westdeutscher Rundfunk (WDR)*, several long-playing records and compact discs for their review, but none of her music had yet been broadcast. She took legal proceedings against *WDR* on this ground, claiming that, as a public broadcasting company, *WDR* had a duty to have a balanced programme schedule and it should not just consider "major" production companies. Consequently, *WDR* should play her music and make the requisite broadcasting time available.

Section 5, paragraph 4, no. 1 of the Law on *Westdeutscher Rundfunk*-Cologne provides that the diversity of existing opinions and ideological, political, scientific and artistic trends must find the broadest and fullest possible expression in the full range of the company's programmes. The Court could not find, however, that this provision gave individual artists such as the plaintiff a subjective right to the transmission of their music or to a flawless decision on the part of the *WDR*. The freedom of broadcasting guaranteed by Article 5, paragraph 1, second sentence of the Basic Law required that broadcasting companies should be controlled just as little as the State by individual industrial groups and that they should record and convey the diversity of issues and opinions which played a role in society as a whole. This meant that broadcasting companies had a responsibility towards the general public and that was precisely why its programming principles should not favour any particular group of people. Accordingly, the right to have particular works played could not be derived from the law.

Equally, the fundamental right to artistic freedom enshrined in Article 5, paragraph 3 of the Basic Law did not give the plaintiff the right to demand that *WDR* broadcast her music or take flawless decisions. While artistic freedom does cover the dissemination of works of art to third parties as well as their creation, that does not imply a right to demand or even to cause the State or private media companies to disseminate such works. Distribution activities are covered by artistic freedom in the sense that such activities may not be prevented. Neither can any other conclusion be drawn from the plaintiff's argument that, as a public broadcaster, the defendant is a state authority. As the legal person entitled to exercise the fundamental rights guaranteed by Article 5, paragraph 1, second sentence of the Basic Law, the broadcasting company stands in the opposite camp to the State.

The court did not believe that the plaintiff could rely on her objection that as a result of its widespread impact as a mass medium, radio was by far the most important sphere of influence for the activities of artists who made music. The plaintiff's artistic communication rights were not unattainable. The fact that she had no right to force the *WDR* to broadcast her music did not mean that it was entirely out of the question that it might be played on its programmes. There were also many other public broadcasters and private media available to her. ■

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● ***Oberverwaltungsgericht Köln* (Cologne Administrative Court of Appeal), decision of 7 October 2003**

DE

DE – Allocation of Broadcasting Time for Terrestrial Programmes Must Not Depend on Cable Capacities

The relevant regional regulatory body, the *Landesmedienanstalt Berlin-Brandenburg* (Berlin-Brandenburg Regional Media Authority – *MABB*), must make a fresh decision over the allocation of broadcasting time to the Berlin TV company, *Fernsehen aus Berlin GmbH (FAB)*. In a judgment of 13 November 2003 the Berlin *Verwaltungsgericht* (Administrative Court – *VG*) set aside the *MABB*'s initial decision and instructed it to make a fresh decision, in which it was to take account of the Administrative Court's interpretation of the law.

The *FAB* had applied for a seven-year extension of its broadcasting permit for the terrestrial transmission of its programmes 24 hours a day. The *MABB* decided, however, to grant the seven-year permit only for the twelve hours from noon to midnight each day. For the rest of the day the permit would be extended only on a yearly basis and would depend on the capacity of the Berlin cable network. The Berlin cable network was already at full capacity and so a 24-hour permit for *FAB* was out of the question. Other applicants also had to be given a chance of obtaining a broadcasting slot at a suitable time.

The Administrative Court could not agree with the *MABB*. The Court saw no basis under existing legislation to determine the extension of broadcasting permits for terrestrial services according to the availability of places on the cable network. The law set much more store by the availability of capacity for "appropriate programmes" or "the selection criteria best suited to the existing capacity". Since, however, the law made a clear distinction between terrestrial broadcasting and cable broadcasting, it was only relevant to the decision in the *FAB*'s case whether there was sufficient terrestrial broadcasting capacity. This was unquestionably the case and so the arguments raised by the *MABB* were not legally justifiable. ■

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● ***Verwaltungsgericht Berlin* (Berlin Administrative Court), judgment of 13 November 2003, Case no. VG 27 A 125.02**

DE

DE – Discussion on Broadcasting Time for Independent Third Parties, Part 1

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The entry into force on 1 January 1997 of the *Rundfunkstaatsvertrag* (the Agreement between the Federal States on Broadcasting – *RstV*), in the form of its third amendment, introduced new rules on the protection of diversity of opinion into Germany's broadcasting regulations. Part of this series of standards was a measure to attribute broadcasting time to third parties as a means of ensuring diversity (see IRIS 1997-2: 13 and IRIS 1997-3: 13). These so-called third parties are required to be totally independent of the main programme organiser. Under section 31, paragraphs 1 and 3 of the RstV, the makers of the window programme must be editorially independent from those of the main programme. The cause of the current administrative disputes is the renewed licensing of third-party suppliers in Rhineland-Palatinate and Lower Saxony, against which the defeated co-applicant, Focus TV Produktions GmbH (Focus TV), has objected.

Just recently, the Rhineland-Palatinate *Oberverwaltungsgericht* (Administrative Court of Appeal – *OVG*) has given two decisions on applications for temporary relief, in which, in considering the question of the independence of the Development Company for Television Programs (DCTP) from the broadcaster, SAT 1, the Court gave more thorough consideration to the meaning of the concept of programme organiser. In connection with this case, it said that it might be plausible to argue that mere formal criteria such as being a licence holder might not be enough to judge whether a company was a programme organiser. Much more consideration had to be given to the material criterion of responsibility for programme making. It was not possible, at least where radio programmes which were the result of joint activities were concerned, to establish exactly where this responsibility lay without some further investigation. The organiser should at any rate be in charge of programme-making itself. In one of the decisive cases (2 B 11374/03.OVG), the DCTP had not actively made programmes itself but left this to Spiegel TV GmbH (its co-operation partner), giving it complete editorial independence. Actual programmes seemed to the Administrative Court of Appeal to raise doubts about the DCTP's status as a programme organiser. However, it was prepared to accept that the co-operation agreement between the DCTP and Spiegel TV GmbH might have conferred the requisite organising role on the DCTP if it had reserved final decisions on programming for the DCTP according to the so-called editor's principle. This was, however, yet to be decided in the main proceedings.

In the other case (2 B 11372/03.OVG), the DCTP had pieced together its third-party broadcasting time from various cultural contributions, which it itself had not made. In this case however, unlike that of the co-operation with Spiegel TV, the OVG allowed the benefit of the doubt as to the actual responsibility for programme content to play in favour of the DCTP. This would apply so long as no more precise proof arose concerning the internal decision-making processes between the DCTP and its co-operation partners, making it clear that the DCTP was no more than a "clearing house".

As a result, the Rhineland-Palatinate LPR's licensing decisions still stood. The Administrative Court of Appeal said that in the main proceedings, there could be scope to look into the questions raised by Focus TV concerning the DCTP's independence. It was argued that under concentration law, there was a dependent relationship between the licence holder and the holder of a licence for the broadcast of nationwide television, RTL Television GmbH. ■

● **Decisions of the *Oberverwaltungsgericht Rheinland-Pfalz* (Rhineland-Palatinate Administrative Court of Appeal – OVG) of 6 November 2003, Cases nos. 2 B 11372/03.OVG and 2 B 11374/03.OVG**

DE

DE – Discussion on Broadcasting Time for Independent Third Parties, Part 2

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In a decision of 15 December 2003 the Lower Saxony *Oberverwaltungsgericht* (Administrative Court of Appeal – *OVG*) also dismissed the appeal by the production company, Focus TV Produktions GmbH (Focus TV), against the first instance decision by the Hannover Administrative Court. Focus TV had lodged an application for temporary relief from the decision to award its competitor, the Development Company for Television Programs (DCTP), a licence as an independent third party for programmes broadcast by RTL Television (see IRIS 2004-2: 9, *supra*).

The application for the re-establishment of the suspensive effect of the objection against the licensing of the DCTP was unsuccessful. The OVG dismissed it as ill-founded. The relevant regulatory body, the Lower Saxony Regional Media Authority, had merely satisfied the purely formal requirements regarding reasons set out in section 80, paragraph 3, first sentence of the *Verwaltungsgerichtsordnung* (Administrative Courts Act – *VwGO*). It had argued in its decision that it would be contrary to the public right to the protection of the diversity of opinion if an objection by a competitor had suspensive effect. Furthermore, the immediate execution of the decision had had to be ordered in the interests of the window programme organiser, whose livelihood may otherwise have been threatened. There had also been a threat to its independence, for if it had not been licensed as an independent third party within the meaning of section 31 of the RstV, then it would have relied on the programming decisions of the main programme organiser. The OVG did not examine the substantive merits of this reasoning, as there was no provision for this in section 80, paragraph 3, first sentence of the VwGO.

In the Court's opinion, the question as to who should be held liable under sections 31, paragraph 3 and 28 of the RstV, owing to the complex company law participation structures of Spiegel TV, which provides some of the material broadcast by DCTP, required some clarification in the main proceedings. It was also left until the main proceedings to examine the question of whether the supplier of a substantial share of the broadcasting time of a window programme organiser could be regarded in itself as an organiser within the meaning of section 31 paragraph 3 of the RStV. The varying choice of words in section 31 of the RStV would tend, however, to argue against such an interpretation. ■

● **Lower Saxony *Oberverwaltungsgericht* (Administrative Court of Appeal), decision of 15 December 2003, case no. 10 ME 108/03**

DE

DE – Common Stance of the Regional Media Authorities for the Stockholm Follow-Up Conference

At its meeting of 27 January 2004 the Conference of Directors of the Regional Media Authorities (*Direktorkonferenz der Landesmedienanstalten – DLM*) adopted a common stance for two international conferences in May 2004 and the year 2006, during which the broadcasting frequencies currently being used, among other things, for analogue terrestrial television are due to be reallocated.

The working party given the task of elaborating a common German stance under the chairmanship of the Federal Ministry of the Economy and Employment had agreed on its conclusions in December 2003. In its report the DLM emphasises the importance of digital radio.

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Accordingly, in the new provision to be made for a second coverage area for DAB (*Digital Audio Broadcasting*), nationwide radio programme services will have to be taken into account and the capacity for nationwide data services will have to be catered for. The DLM believes that in the new provision to be made for the third coverage area for DAB, the supply structures should be arranged in such a way that regional and local broadcasters in Germany's federal States will be readily able to switch over to DAB and make economic progress in this area. It was important for the country as a whole for a consistent and workable proposal to be made for the allocation of frequencies for terrestrial digital television (Digital Video Broadcasting-Terrestrial, DVB-T) and terrestrial digital radio (DAB-T), taking account of all the supply areas declared by the regions. ■

● **DLM press release of 27 January 2004, available at:**
http://merlin.obs.coe.int/redirect.php?id=8860

DE

DE – Media Concentration Report Published

On 9 December 2003, the Regional Media Authorities published the second report on media concentration by the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Media Concentration Commission – *KEK*). Under section 26 of the *Rundfunkstaatsvertrag* (the Agreement between the Federal States on Broadcasting – *RStV*), a report of this kind must be published every three years.

Section 26, paragraph 6 of the *RStV* provides that the report must contain, in particular, comments concerning the integration between television and other media-related markets (e.g. broadcasting rights or the markets in technical and administrative services for digital and pay TV), horizontal integration between broadcasters in different transmission areas and international integration in the media field. This covers both the description of the relationships between broadcasters under company law and their vertical and diagonal integration with other media markets. The report also gives an opinion on the rules on the protection of diversity of opinion contained in the *RStV* and makes suggestions as to how these rules might be reformed. Over and above this, the investigation extends to the European Union's role in the field of media concentration, along with the development of regulations on media concentration in the USA, Great Britain, Italy and Switzerland.

The title of the report, "Protecting Diversity of Opinion at Times of Radical Change", relates as much to the technical revolution to be expected as a result of the changeover from analogue to digital broadcasting technology as to changes in the economic environment, particularly the challenges brought about by the current economic downturn in the media markets. The period during which the report was being drawn up saw the collapse of the Kirch media group, which the *KEK* believes to have had some influence on media developments – albeit not yet having caused any decisive horizontal deconcentration in the area of nationwide private television. Although two new market players had appeared in the shape of Haim Saban and the Permira Investment Group, the presence of the RTL Group and ProSiebenSat1 Media inc. meant that, as before, two private operators with high audience figures taken together with the public-service broadcasters accounted for more than 90 % of the total television audience in Germany.

In the *KEK*'s opinion, the audience ratings model, which is used in Germany to determine the power of a company's or a consortium's opinion, has basically stood the test of time. The *RstV* has adopted the audience ratings criterion, which weighs heavily in favour of journalistic competition, as the main indication of a dominant power of opinion. The presence of a company in related media markets is also regarded as a factor that brings competition law into play. That is why the report extends beyond actual television markets to related markets as well.

Alongside its main reporting task, the report attributes to itself a warning role. It says that it has become clear that only economically powerful operating groups can be expected to provide a range of programmes capable of winning through and that it is possible that the change in the participating and controlling rights of established television broadcasters will give rise to lasting changes on the whole broadcasting scene. As a result of the diverse links between the various media sectors and their related markets, a thorough general investigation may be the only way of countering the threats to diversity of opinion. ■

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● **Second Report on Media Concentration, 2003: Protecting Diversity of Opinion at Times of Radical Change, available at:**
http://merlin.obs.coe.int/redirect.php?id=8849

DE

DE – TV Programme Criticised

On 27 January 2004 the Conference of Directors of the Regional Media Authorities (DLM) dealt with questions concerning the acceptability of a so-called survival show ("*Ich bin ein Star – Holt mich hier raus!*" "I'm a Celebrity – Get Me Out of Here!"), in which "celebrities" were put in a camp in the jungle and required to perform certain unpleasant tasks. Viewers voted to decide who was to leave the camp and be eliminated from the competition. Immediately broadcasting of the show started, the Regional Media Authorities had asked the *Kommission für Jugendmedienschutz* (Commission for the Protection of Youth in the Media – KJM, see IRIS 2002-9: 15) to investigate the programme. At its meeting of 21 January 2004, the KJM came to the conclusion that despite reservations concerning its content, the programme was questionable where it came to matters of protecting minors and human dignity, but legally admissible nonetheless. The DLM argued, however, that in future, the self-regulatory organisation, *Freiwillige Selbstkontrolle Fernsehen* (Voluntary Self-Regulatory Authority for Television – FSF, see IRIS 2003-7: 8) should assume more responsibility. The FSF should not just examine media law questions along the lines of the self-regulation intended by the legislator, but also discuss questions such as programming ethics with broadcasters. The DLM reminded the FSF of its responsibility to society, particularly in view of the fact that plans for programmes adopting the same format had already been announced. ■

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● **DLM press release of 27 January 2004, available at:**
http://merlin.obs.coe.int/redirect.php?id=8860

DE

ES – Amendment of Several Provisions Relating to Media Law

On 30 December 2003, the Spanish Parliament approved the *Ley de Medidas fiscales, administrativas y del orden social* (Act 62/2003, on Taxation, Administrative Provisions and Social Affairs), which partially amends some existing norms relating to media law.

An Act on taxation, administrative provisions and social affairs (hereinafter referred to as "Special

Measures Act") is approved each year, together with the Budget Act (see also IRIS 2003-2: 8 and IRIS 2000-2: 13). The main objective of the Special Measures Act is to introduce amendments in existing provisions, thus acting as a "container" of amendments. For example, this year's Special Measures Act amends more than thirty different Acts, including the following:

Act 41/1995, on Local Terrestrial TV

The "Special Measures Act" of 2002 established that Local Terrestrial TV had to be broadcast using only digital technology. However, the "Special Measures Act" of 2003 has established that those entities which are awarded a concession for the provision of Local Terrestrial TV services may ask for a two-year moratorium. During that period, they may be allowed to broadcast using analogue technology. The Special Measures Act of 2003 allows the Government to modify the term of the moratorium, so it can duly take into account the pace of the implementation of digital TV in Spain.

Act 10/1988, on Private Television

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The new amendments of this Act deal mainly with limits to ownership in terrestrial TV concessionaires.

Currently, an undertaking that has more than 5 % of the share-capital or voting rights of one TV concessionaire shall not be allowed to have a relevant holding in any other TV concessionaire whose coverage area overlaps.

The new rules also establish that an undertaking that has more than 5 % of the share-capital or voting rights of one national TV concessionaire shall not be allowed to have a relevant holding in any regional or local TV concessionaire whose potential audience in any of these coverage areas exceeds 25 % of the Spanish population. A similar limit is established for the regional TV concessionaires, in relation to local TV concessionaires whose potential audience exceeds 25 % of the population of the region in question.

It is also forbidden to have relevant holdings in the share-capital or voting rights of national, regional and local TV concessionaires whose programs can be simultaneously received in the same area.

For the purposes of these rules, the holdings of at least 5 % of the shares or voting rights of a TV concessionaire shall be deemed as "relevant holdings". The Act also establishes how to determine which shares are under the control of a specific natural or moral person.

The Act introduces some new provisions relating to the procedure to be applied when these ownership limits are breached, and it also provides for a 1-year moratorium for the application of these limits as regards national digital terrestrial TV concessionaires.

The Special Measures Act for 2003 also introduces new provisions that oblige digital TV concessionaires to broadcast original TV programmes for at least 4 hours a day and 32 hours a week, including the obligation to broadcast some of those original TV programmes during prime time (between 13:00 and 16:00 and between 20:00 and 23:00). These provisions also set limits to networking agreements relating to the provision of regional or local digital terrestrial TV services.

The Special Measures Acts, which have been used since the mid 90's by socialist and conservative Governments alike, have been severely criticized by many experts because of their heterogeneity and lack of transparency and because of the insufficient debate which precedes the approval of these Acts: each year the Bill of the Special Measures Act is usually presented in September/October, together with the Budget Bill, and both bills are usually approved before the end of the year. ■

● ***Disposición Adicional Trigésima [Obligaciones de programación y limitaciones a la emisión en cadena de servicios de televisión], Trigésima Primera [modificación de la Ley 41/1995, de Televisión Local Por Ondas Terrestres], Trigésima Segunda [modificación de la Ley 10/1988, de Televisión Privada] y Cuadragésimo Cuarta [Conversión a la tecnología digital de las emisoras de radiodifusión sonora] de la Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y del orden social, B.O.E. n. 313, 31.12.2003, pp. 46874 y ss.*** **(Additional Provisions: Thirtieth [Obligations related to programming and limits to networking agreements], Thirty-First [amendment of the Act 41/1995, on Local Terrestrial TV], Thirty-Second [amendment of the Act 10/1988, on Private Television], and Forty-Fourth [Digitalisation of radio broadcasting] of the Act 62/2003, on Taxation, Administrative Provisions and Social Affairs of 30 December 2003, BOE n. 313, 31 December 2003, pp. 46874 and ff.), available at:**
http://merlin.obs.coe.int/redirect.php?id=8830

ES

FR – Introduction of a Tax Credit for the Cinema in the 2004 Budget

In a communication on policy in favour of the cinema presented on 30 April 2003, the Minister for Culture and Communication, Mr Jean-Jacques Aillagon, pointed out that the system for funding cinema was showing signs of fragility, and that it was necessary to make changes in the system.

This has now been done, with the adoption of a tax credit system for cinema as part of the 2004 budget on 30 December 2003. Implementing regulations dated 7 January 2004 lay down the way in which the measure is to be implemented.

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Légipresse

The new system is a response to the recurrent concerns of professionals in the sector. It enables cinematographic production companies that are liable to company tax and which act as executive production undertakings to benefit from a tax credit in respect of a range of production expenses listed in the new legislation – these correspond to operations carried out in France with a view to producing full-length cinematographic works that are approved and may receive financial support intended for the cinematographic industry.

There is a ceiling of EUR 500 000.00 on the amount of this tax advantage for a cinematographic work of fiction or a documentary, increased to EUR 750 000.00 for full-length animated films. The difference is justified by the fact that technical expenditure for this type of film takes up a larger proportion of their budgets.

The tax credit will be offset against the company tax due from the undertaking for the current year, in respect of which the expenditure that may attract this advantage is set out. If the amount of the tax credit exceeds the amount of tax due for a financial year, the surplus shall be repaid.

This new measure reflects the Minister for Culture and Communication's concern to encourage a new increase in the number of films being made in France using local technical services, in the face of the increase in the number of films that were shot outside France in 2002 and 2003. ■

● **2004 Budget (Act No. 2003-1311 of 30 December 2003), published in the official gazette (*Journal Officiel*) of 31 December 2003; available at:**
http://merlin.obs.coe.int/redirect.php?id=8768

● ***Décret n° 2004-21 du 7 janvier 2004 pris pour l'application des articles 220 sexies et 220 F du code général des impôts et relatif à l'agrément des œuvres cinématographiques de longue durée ouvrant droit au crédit d'impôt pour dépenses dans la production d'œuvres cinématographiques*** **(Statutory instrument Nr. 2004-21 of 7 January 2004 laying down the way in which the tax credit system for cinema included in the 2004 budget is to be implemented), available at:**
http://merlin.obs.coe.int/redirect.php?id=8865

FR

FR – Framework for Advertising on Television for the Press and Publishing Sector

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The CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) published two recommendations on 18 December 2003 that lay down the methods for implementing the Decree of 7 October 2003 on advertising on television for sectors that were previously prohibited from advertising – namely the press and publishing – thereby exercising its powers of interpretation.

Since 1 January, the press and the literary publishing industry have had full access to advertising on television. The CSA feels that this new possibility should be considered as an "extension of the freedom of the press".

In respect of advertising that could have a degree of political content, the CSA draws a distinction between "normal" periods, during which the concept of editorial freedom is to prevail, and pre-election periods, during which the CSA will remain vigilant regarding the balance of the various political forces. Apart from advertising that may have political content, advertising spots in favour of the press or literary publishing must also incorporate the prohibitions of access to advertising on television that apply to certain sectors, such as tobacco, alcoholic beverages, medicines that cannot be obtained without a doctor's prescription, firearms and the cinema. Advertising in respect of pornographic publications is prohibited on channels not authorised to broadcast programmes and works that may not be shown to young people under the age of 18.

Literary publishing may only be advertised on television on those television services that are distributed exclusively by cable or broadcast by satellite; advertising in favour of books and collections continues to be prohibited on the other services broadcast terrestrially.

The CSA nevertheless stated that the guidelines it was proposing "should, of course, be appreciated on an individual basis". ■

- ***Décret n° 2003-960 du 7 octobre 2003 modifiant le décret n° 92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et fixant les principes généraux définissant les obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat* (Statutory instrument Nr. 2003-960 of 7 October 2003 on advertising, sponsoring and teleshopping on television), available at:**
http://merlin.obs.coe.int/redirect.php?id=8861
- **CSA Recommendation of 19 December 2003 on advertising on television in favour of the press sector, available at:**
http://merlin.obs.coe.int/redirect.php?id=8769
- **CSA Recommendation of 19 December 2003 on advertising on television in favour of the literary publishing sector, available at:**
http://merlin.obs.coe.int/redirect.php?id=8770

FR

FR – New Definition of Public On-line Communication in Digital Economy Bill

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On 8 January, the Parliament put draft legislation on confidence in the digital economy through its second reading. Mr Jean Dionis du Séjour, parliamentary rapporteur on the bill, had tabled an amendment on 10 December proposing a new definition for public on-line communication. The amendment was adopted contrary to the Government's opinion. It states that the term "on-line public communication" means any transmission of digital data that does not constitute private correspondence, in response to an individual request and using a telecom process that allows the mutual exchange of information between the sender and the receiver, that on-line public communication is not regulated, and that the exercise of this freedom may not be limited except as required firstly by respect for the dignity of the human person, the protection of children and young people, the freedom and property of others, and the pluralist nature of the expression of currents of thinking and opinion, and secondly by the maintenance of public order, the requirements of national defense, the demands of the public service, and by the technical constraints inherent in the means of communication.

With this amendment, the Parliament indicated its intention to create specific legislation rather than to include the Internet in the text of the Audiovisual Communication Act of 30 September 1986. As stated in the explanatory memorandum to the amendment, the truly specific legal aspects of the Internet are thus defined, without restricting the scope of audiovisual content, the rest being covered by common law. The bill, which has been adopted by the National Assembly's Economic Affairs Committee, will be put through its second reading in the Senate on 6 and 7 April.

The text also makes provision for prohibiting the unwanted advertising messages ("spam") that are flooding e-mail letterboxes. In future it will be necessary for the Internet user to be asked by mail if he/she agrees to receive this type of message.

These new provisions will have to go through a second reading in the Senate. ■

- **Draft legislation on confidence in the digital economy (23 January 2004), available at:**
http://merlin.obs.coe.int/redirect.php?id=8771

FR

GB – Regulator Lifts Ban on Joint Selling of Airtime for Advertising

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The Independent Television Commission and the Office of Communications, the regulators for commercial UK broadcasting until the end of 2003 and after that date respectively, have abolished the former rule preventing the joint sale of airtime for advertising by more than one broadcaster (see also IRIS 2001-6: 7). The review of the rules was a result of conditional approval of the merger of the two major ITV companies, Carlton and Granada (see IRIS 2003-10: 7).

In their consultation on the issue the regulators considered whether to issue new rules or to rely on general competition law alone to prevent anti-competitive practices on the sale of airtime. The respondents supported the latter view, and for Channel 3 the ban on joint selling was lifted immediately from 1 December 2003. Further control of potential abuse will be afforded by conditions imposed on the merger of Carlton and Granada (also discussed at IRIS 2003-10: 7).

In relation to other broadcasters, the respondents' views were split as to the extent to which competition law would provide an adequate remedy, but the regulators believed that it would do so, especially as the Office of Communications (unlike its predecessor) has "concurrent powers", which enable it to enforce provisions of the Competition Act 1998 prohibiting anti-competitive agreements and abuse of a dominant position directly in the broadcasting field. Thus the restrictions were lifted for all other broadcasters also.

The regulators have however retained prohibitions on conditional selling, by which a broadcaster requires that an advertiser who wishes to purchase airtime on one channel must buy another of the broadcaster's products as a pre-condition of the sale, although bundling of airtime on one channel with that on another will be allowed, so long as the sale of the former is not conditional on the purchase of the latter. Withholding airtime to push up prices is also prohibited in the case of analogue terrestrial channels. ■

- **"ITC and Ofcom Announce Television Airtime Sales Rules", Ofcom News Release of 1 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8765

GB – Regulator Approves Codes of Practice for Commissioning from Independent Producers

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The Communications Act 2002 (section 285) requires that the public service broadcasters (including the BBC under ss. 198 and 203) draw up and apply codes of practice governing the commissioning of independent productions for broadcasting on their networks, in accordance with general guidance issued by the Office of Communications (Ofcom), the new communications regulator (for background see IRIS 2003-3: 12). Ofcom has now approved the codes developed by the BBC, ITV, Channel 4, Five and GMTV.

The guidance is designed to provide a standard framework for the codes. It requires that the codes set out a clear and transparent process for commissioning. A key principle is that producers should retain rights in their programmes unless these are explicitly sold to broadcasters; thus the codes must define a minimum set of "primary rights" to be acquired for the public service channels, and confirm that negotiations for these will be separate from those for secondary and tertiary rights. There should be no bundling of rights unless this is agreed by both parties. Primary rights may however include certain new media rights, for example simulcast Internet streaming.

A list of indicative tariffs should be developed and the methodology used (though not necessarily the tariffs themselves) published. Provision should also be made for commissioning outside the tariff system.

The standard duration of primary rights should be defined in each code with a typical licence period of not more than five years. Broadcasters should not seek to include rights in perpetuity as a matter of course.

The codes are to include a procedure for joint review by the broadcaster and by Ofcom, and regular reports to Ofcom will be required on the number and nature of commissions and the duration of rights. Ofcom will not act as arbiter in disputes about the application of the codes, but provision should be made for independent arbitration. ■

- **"Ofcom Approves Code for Independent Producers", Ofcom Press Release of 9 January 2004, available at:**
http://merlin.obs.coe.int/redirect.php?id=8828
- **"Guidelines for Broadcasters in Drafting Codes of Practice for Commissioning Programmes from Independent Suppliers", Ofcom, available at:**
http://merlin.obs.coe.int/redirect.php?id=8829

HU – New Act on Film Production and Distribution

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On 22 December 2003 the Hungarian Parliament approved the Act on Motion Pictures. The aim of the Act is to increase the level of Hungarian film production by establishing a coherent national film support system.

The nationality of a film is defined in the Act by detailed rules, based on the criteria specified in the European Convention on Cinematographic Co-Production.

The Act lays down provisions concerning the *Magyar Mozgókép Közalapítvány* (Motion Picture Public Foundation of Hungary). This institution was established by the government and 27 organisations in the field of cinema in 1998. According to the new Act, the Public Foundation is responsible for the distribution of financial support allocated in the central budget for the Hungarian film sector. The Act defines the legal status of this organisation and sets out, to a limited extent, basic procedural rules for its activities.

The new law also specifies the different kinds of public support mechanisms. In regard to this, the Act provides rules for reference film aid and selective funding as well. While adopting the Act on Motion Pictures, the Parliament also amended the Act on Corporation Tax, granting certain preferences for enterprises engaged in film production.

The Act on Motion Pictures sets up several new organisations. One of these is the *Mozgókép Koordinációs Tanács* (Motion Pictures Coordination Council). This consultative body is composed of delegates from the public authorities playing a role in the financing of films and – on the other hand – broadcasters and professional organisations. It should be noted that Art. 16 of Act No. I. of 1996 on Radio and Television Broadcasting (Broadcasting Act, see IRIS 2002-8: 8, IRIS 2000-6: 9 and IRIS 1996-1: 14) imposes an obligation on national television broadcasters in Hungary to expend 6% of their advertising revenue on the production of new films. The formation of the council is intended to serve the purpose of achieving harmony between the functioning of this kind of private funding and the public support provided from the state budget.

The other institution set up by the new law is the *Nemzeti Filmiroda* (National Film Office). This public authority will keep the official registers of motion picture organisations and enterprises claiming financial support. The Office will also register films produced or distributed with public funding, and be responsible for the protection of minors in the film sector by classifying films distributed in Hungary. This classification system follows the same rules as provided by articles 5/A – 5/F of the Broadcasting Act in the case of television programmes. In carrying out this function the Office will be backed by the *Korhatár Bizottság* (Classification Commission), consisting of six specialists.

The *Magyar Nemzeti Filmarchívum* (Hungarian National Film Archive) is defined in the Act as the collector and the trustee of the national film heritage. This means that those enterprises of the Hungarian film industry that are owned by the State via the *Állami Privatizációs és Vagyonkezelõ Rt.* (Hungarian Privatization and State Holding Company) will transfer their film rights to the Archive.

The Act on Motion Pictures will enter into force on 1 April 2004. The Ministry of National Cultural Heritage is expected to issue the decrees necessary for the proper application of the new Act by this date also. ■

- ***2004. évi II. Törvény a mozgóképrõl* (Act No. II. of 2004 on Motion Pictures), available at:**
http://merlin.obs.coe.int/redirect.php?id=8836

HU

IE – Adoption of New Broadcasting (Funding) Act

On 23 December 2003, the Broadcasting (Funding) Act was promulgated into law. The purpose of the Act is, according to its long title, "to provide that the Broadcasting Commission of Ireland prepare a scheme or schemes for the funding of grants to support certain television and radio programmes and projects out of an amount of 5 per cent of net receipts for television licence fees, to outline the objectives of a scheme and to provide for related matters".

The types of programmes that will benefit under any scheme(s) to be established pursuant to the new Act are listed in s. 2(1). These comprise new television and radio programmes (a) on Irish culture, heritage and experience (including history; historical buildings; the natural environment; folk, rural and vernacular heritage; traditional and contemporary arts; the Irish language, and the Irish experience in European and international contexts); (b) to improve adult literacy and (c) either of these types of programmes in the Irish language. According to s. 3 of the Act, the objective underlying this choice of programme types is to stimulate the production of programmes dealing with Irish culture, heritage, experience and language in qualitative and quantitative terms; record oral and other aspects of Irish heritage that are

either vulnerable or previously unrecorded, and to develop local and community broadcasting.

In order for programmes to be eligible for funding under a scheme, however, a number of conditions must be fulfilled (s. 2(2)). First, television programmes have to be broadcast "on a free television service which provides near universal coverage in the State", or "on a cable or MMD system as part of a community content contract". Similarly, radio programmes have to be carried on sound broadcasting services licensed by the Broadcasting Commission of Ireland (BCI) or operated by *Radio Telefís Éireann* (*RTÉ*), the national public service broadcaster. Second, with the exception of children's programmes and educational programmes, these programmes must be broadcast during peak viewing or listening times. Third, programmes may not be "produced primarily for news or current affairs".

Under the Act, funding can also be set aside for "the development of archiving of programme material produced in the State" (s. 2(1)(d)). In this connection, a scheme may provide funding for projects on, *inter alia*, "research, needs assessments, analyses, feasibility studies and pilot projects", including those undertaken by or on behalf of the Minister (s. 2(2)(c)). The end-goal here is the development of an integrated approach to the archiving of programme material, dealing with both storage and access issues.

Previously, the net receipts for television licence fees went directly into the coffers of *RTÉ* (see IRIS 2002-4: 7 and IRIS 2001-8: 11). Apart from the 5 % of these receipts (worth an estimated EUR 8 million per annum) earmarked by the Act for funding a prospective scheme or schemes as outlined above, these receipts will continue to be paid to *RTÉ*. Provision is made in the Act for the periodic review of "the operation, effectiveness and impact" of a scheme by the BCI, initially not later than three years after its commencement, and usually at three-year intervals thereafter (s. 5). ■

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● **Broadcasting (Funding) Act, 2003 (No. 43 of 2003), enacted on 23 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8837

IT – New Self-Regulatory Code of Conduct on Internet and Children

On 19 November 2003, the Minister for Communications, the Minister for Innovation and Technology and the main associations of Internet service providers signed a new self-regulatory Code of Conduct aimed at protecting children from potentially damaging use of, and from unsuitable content on, the Internet. On the basis of the self-prescribed set of rules, Internet providers will not only implement and promote measures in order to provide differentiated navigation services (which restrict or exclude access to certain content), but they will also provide content classification and will abstain from carrying out any profiling of child users. It has also been agreed upon that the home page of the providers adhering to the Code will display the distinctive sign "Protection of Children", in order that it will be immediately recognizable for users. Links are also to be provided to a list of instructions on how to notify a possible violation of the rules to the national Guarantee Committee. This Committee is to consist of eleven experts, including representatives of the adherents, the Ministry for Communications and the Presidency of the Italian Council of Ministers – Department for Innovation and Technology. Three members will be designated by the Association for the protection of minors and the National Users Council. The Code explicitly imposes an obligation on the adherents to cooperate with the competent authorities in the prevention, restriction and repression of child pornography. The Code also aims to facilitate the protection of minors from the potential risks of unsolicited commercial information, in accordance with the rules contained in the E-commerce Directive.

The present Code follows the adoption by Italian broadcasters in November 2002 of a self-regulatory Code of conduct relating to the protection of minors as regards television (see IRIS 2003-4: 10). ■

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● ***Codice di Autoregolamentazione "Internet e Minori"* (Self-regulatory Code of Conduct "Internet and Children"), 19 November 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8763 (IT)
http://merlin.obs.coe.int/redirect.php?id=8764 (EN)
IT-EN

NL – Supreme Court Decides on Peer-to-Peer File-Sharing Issue

On 19 December 2003, the Dutch Supreme Court decided on the appeal lodged against the decision of the Amsterdam Court of Appeal of 28 March 2002 in the case of Kazaa v. Buma/Stemra (see IRIS 2002-1: 13 and IRIS 2002-5: 12). Kazaa is the producer of one of the most popular file-sharing programs, used for the transfer of (often infringing) material via the Internet. The Amsterdam Court of Appeal had ruled that Kazaa could not be held liable for the offering of its file-sharing program, and this decision has not been overturned by the Supreme Court.

However, since the Dutch Supreme Court does not perform a full review, it did not decide on the merits of the case, opining on relatively minor points of the appealed judgment. Buma/Stemra's complaint focused on whether the lower courts should have ordered Kazaa to prevent the exchange of infringing files in future versions of its program. According to the Supreme Court, the Court of Appeal did not err by not ordering this.

As these decisions all form part of the preliminary proceedings, Buma/Stemra can still initiate full-scale proceedings against Kazaa. ■

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● **Judgment of the Dutch Supreme Court of 19 December 2003, LJN-no. AN7253, available at:**
http://merlin.obs.coe.int/redirect.php?id=8827
NL

NL – One Year Extension of Tax Advantages for Investment in Film

For the past five years, the Dutch film industry has benefited from the existence of special tax advantages for private investors who financially support films (see IRIS 1997-7: 15). This scheme was due to expire on 1 January 2004, but the government has decided on a one-year extension of the tax advantages. The European Commission has approved this prolongation. The extra costs that are involved in the extension of these film-support measures, are being covered by funds that are left over from 2002 and 2003. ■

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● ***Besluit tot verlening van de filminvesteringsaftrek* (Regulation on the extension of the film investment tax credit): Stb. 2003, 536, 23 December 2003, available at:**
http://merlin.obs.coe.int/redirect.php?id=8835
NL

NO – Decision on Linking to File Sharing Services

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The issue was whether a consumer portal on the Internet, ABC Startsiden, contributed to infringement of copyright by publishing links to file-sharing services like KaZaA. The plaintiff was Phonofile, a company organising the licensing of musical works for the Internet.

ABC Startsiden is a typical portal, the first page including a categorisation of different services. By selecting the category "MP3", the user was directed to a new page, which included the choice "file sharing". If this was selected, a page was displayed with links to several file-sharing services, including KaZaA.

The court states that file-sharing services may have both lawful and unlawful objectives. The court also based its decision on evidence that proved that users who had been referred to KaZaA from the home page of Startsiden used the file-sharing service for unlawfully making protected musical works available to the public. In this way, the court found that there had been established a certain actual causation between the links and the infringements. However, to be legally relevant, the causation also had to be qualified according to Norwegian legal doctrine. The court did not find that such a qualified causation had been proven. After having accessed the home page of the file-sharing service using the link from Startsiden, the user would have to make further individual choices before being able to employ the service for offering music files to the public – download the appropriate software, upload files to his or her own disk, etc. In the sequence of events leading to the infringement, the court found that the links of Startsiden were "elements of little importance".

The court also considered whether the law of unfair competition would be relevant. The court found that Startsiden and Phonofile were not competitors in the same market, which would require a rather strong degree for an "unfair" action to be relevant. The court did not find that the links represented such action.

Startisiden was acquitted. The decision has not been appealed, and is therefore final. ■

● **Decision by Oslo First Instance Court of 27 October 2003, available at: http://merlin.obs.coe.int/redirect.php?id=8863**

NO – Partial Implementation of the E-Commerce Directive

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The Norwegian E-commerce Act entered into force on 1 July 2003. The Act fulfills some of Norway's obligations in relation to the EEA (European Economic Area), implementing parts of the E-Commerce Directive (Directive 2000/31/EC – see IRIS 2000-5: 3). The current Act implements all aspects of the E-Commerce Directive apart from the provisions regarding the liability of intermediary service providers.

The Act covers mainly the implementation of the provisions regarding the internal market (Articles 1-3), enabling Norwegian citizens and providers, together with the rest of the European Union, to take advantage of the opportunities afforded by electronic commerce without consideration of borders. Furthermore, the Act covers regulation regarding establishment and information requirements (Articles 4-5), commercial communications (Articles 6-8) and contracts concluded by electronic means (Articles 9-11).

As for the implementation of the provisions regarding the liability of intermediary service providers, the Norwegian Ministry of Trade and Commerce issued a white paper on 3 October 2003 (Ot. prp. nr. 4 (2003-2004)). The aim of the white paper is to implement Articles 12-15 of the Directive.

The white paper proposes regulation of intermediaries whereby an intermediary is considered anyone that provides a service that consists of the transmission on a communication network of information or the access to a communication network. According to the white paper, an intermediary will not be liable for any transmission, access to or storing of any illegal information or be liable for any assistance in storing another's information. This is provided the intermediary does not interact in any way, as indicated in the Directive. As for hosting (Article 14 of the Directive), the intermediary can only be held liable in relation to criminal liability if the hosting of the illegal information is being done intentionally. In relation to civil liability, the intermediary can only be held liable if he he acts intentionally or with gross negligence. However, even if the intermediary is not covered by the "freedom from liability", as this provision is referred to, the intermediary will not be automatically liable. The liability of the intermediary must be determined according to specific legislation, such as the Norwegian Criminal Code or the Norwegian Copyright Act.

The liability of intermediary service providers is according to the Directive considered to be a minimum set of rules. The Ministry has not applied the possibility to go further than the Directive by giving more "freedom from liability". The Articles 12 ("mere conduit"), 13 ("caching") and 15 ("No obligation to monitor") are implemented almost literally. Only Article 14 ("hosting") has been implemented by way of national adjustments. The implementation is expected to come into force by the end of 2003. ■

● ***LOV 2003-05-23 nr 35: Lov om visse sider av elektronisk handel og andre informasjonssamfunnstjenester (ehandelsloven)* (E- commerce Act), available at: http://merlin.obs.coe.int/redirect.php?id=8869**

NO

RO – Aid for Film Makers in Romania

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The new Film Act adopted in Romania on 27 November 2002 not only introduced new regulations on every aspect of the organisation, funding and production of films; one of its main aims was also to encourage private initiative in the area of national film production while at the same time making Romania attractive for foreign film producers interested in co-productions (see IRIS 2003–2: 13). This concern also gave rise to the introduction of tax relief for film producers, which will still apply in certain circumstances even after the entry into force of the country's new tax laws on 1 January 2004. Under section 38, paragraph 7 of the Taxation Act, taxpayers who are active in the field of cinema production and are entered as such in the cinema industry's register will benefit from the following advantages until 31 December 2006:

- profit tax will be waived on the share of any proceeds or profits that are re-invested in cinema production;
- profit tax will be reduced by 20 % if new jobs are created in this area, provided that this means that the number of employees exceeds that of the previous year by at least 10 %. ■

● ***Legea cinematografiei Nr. 630 din 27 noiembrie 2002* (Film Act No. 630 of 27 November 2003)**

● ***Legea privind Codul Fiscal* (Taxation Act), *Monitorul Oficial* No. 927 of 23 December 2003**

RO

IRIS LEGAL OBSERVATIONS
OF THE EUROPEAN AUDIOVISUAL OBSERVATORY

RO – Legal Action Taken because of Scenes in TV Magazine Programmes Liable to Corrupt Minors

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In mid-January the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council – *CNA)* imposed fines on two television broadcasters for breaches of regulations designed to protect minors.

The two private broadcasters, Antena 1 and Pro TV, had both broadcast video footage in their TV magazine programmes of a young person committing suicide. In addition, Antena 1 had broadcast a documentary on child pornography on the Internet including only slightly concealed scenes from one of the allegedly pornographic films involving minors.

The CNA held that in view of their potentially harmful effect, the detailed pictures in reports on subjects of this kind and the prime-time broadcasting slot represented an extreme danger to minors.

In the case of the suicide, the CNA submitted that because of the way in which the report was put together, it could not be clearly established whether the journalists' desire was merely to concentrate on portraying the dramatic facts of this individual case or whether they had not been presenting a "model" for young people, as there was no statement by the programme makers in which they spoke out against suicide as a way out of difficult situations. Consequently, at a special meeting on 15 January 2004, the CNA decided to impose fines of 50,000,000 Romanian lei (ROL) each on the "Intact Culture and Art Company", which is Antena 1's licence holder, and the company, SC Pro TV SA, which is PRO TV's licence holder (exchange rate: ROL 41.054 = EUR 1, meaning that the fine was the equivalent of just over EUR 1,200 for each broadcaster). As indicated in the CNA's statement of 15 January 2004, the penalty was based on section 39, paragraph 1 of the *Legea audiovizualului no. 504/2002* (the Audiovisual Act). This provides that the broadcasting of programmes which might damage the physical, mental or moral development of minors and above all the broadcasting of programmes of this sort that contain pornography and gratuitous violence is prohibited.

The CNA also sent all Romanian broadcasters a circular in which it urged them to comply as strictly as possible with the legislation in the audiovisual sector, both where informative programme content and where all contributions to programmes between 6 a.m. and 10 p.m. were concerned. ■

● **Statement of the CNA of 15 January 2004, available at:**
http://merlin.obs.coe.int/redirect.php?id=8850

RO

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