

## INTERNATIONAL

### OSCE

High Commissioner on National Minorities: New Study on Regulation of Minority-Language Use in Broadcasting	2
--	---

### COUNCIL OF EUROPE

Committee of Ministers: Declaration on Freedom of Political Debate in the Media	3
Parliamentary Assembly: New Recommendation on Public Service Broadcasting	3

### EUROPEAN UNION

European Parliament: Resolution on a Community Framework for Collective Management Societies	3
--	---

## NATIONAL

### AM-Armenia:

New Statute on Mass Information	4
---------------------------------	---

### AT-Austria:

Broadcasting Transmission Market Definitions	4
Digitisation Plan Published	5

### BA-Bosnia and Herzegovina:

Agreement Reached over Subscription Fee	5
---	---

### CH-Switzerland:

Communications Commission Issues Partial Ruling on Unbundling	5
--	---

### CZ-Czech Republic:

Updated Digital TV Plan	6
-------------------------	---

### DE-Germany:

Ruling on Public Dissemination of Copyright Photographs	6
Unauthorised Recording Punishable	6
Press Council Activity Report on Editorial Data Protection	7
Split-Screen Advertising Admissible Under Media Law	7
"Judas-Game" Title Prohibited	7

### FR-France:

<i>Conseil d'Etat</i> Bans Film for under-18s	7
MPs Adopt Bill on Electronic Communications and Audiovisual Services at First Reading	8
France 2 Warned that they Must Provide Information Honestly	8

### GB-United Kingdom:

New OFCOM Content Board Adjudicates in Television Advert Complaint	9
---	---

### HU-Hungary:

Decision concerning Discrimination and Insult on Religious Grounds	9
---	---

### IE-Ireland:

European Convention on Human Rights Becomes Part of Irish Law	9
New Film Guidelines	10
Broadcasting Priorities for EU Presidency	10
Broadcasting Ban on Religious Advertising to Continue	10

### IT-Italy: Incentives for T-DVB and C-DVB Decoders and Broadband Access

	11
--	----

TV Channels Exceeding Media Concentration Rules Temporarily Authorised to Continue Broadcasting	11
---	----

New Law on Cinema	12
-------------------	----

### NL-Netherlands:

Subtitles Website Shut Down	12
-----------------------------	----

### NO-Norway:

Court of Appeal Decision in Norwegian DVD Case	12
---	----

PL-Poland: Draft Act on Cinematography	13
--	----

PT-Portugal: New Law Proposal for Audiovisual and Cinematographic Arts	14
---	----

### RO-Romania:

Public Information Guidelines Supplemented	14
Controversy over Election Advertising Rules	14

### US-United States:

Comcast Launches Hostile Tender Offer for Disney	15
---	----

PUBLICATIONS	16
--------------	----

AGENDA	16
--------	----



## INTERNATIONAL

### OSCE

#### High Commissioner on National Minorities: New Study on Regulation of Minority-Language Use in Broadcasting

A unique and comprehensive survey of the regulation of minority-language use in the broadcasting sectors of each of the 55 Participating States of the Organization for Security and Co-operation in Europe (OSCE) was recently concluded by the Programme in Comparative Media Law and Policy (PCMLP) of the University of Oxford and the Institute for Information Law (IViR) of the University of Amsterdam.

Commissioned by the OSCE High Commissioner on National Minorities as part of the preparatory process for the elaboration of a new set of international Guidelines on the Use of Minority Languages in the Broadcast Media (see IRIS 2004-1: 3), the study reveals an enormous variety in the array of legislative and regulatory regimes for language use in broadcasting currently in place throughout the OSCE. The study's main conclusion is that language use in the broadcast media is: (1) typically

regulated; (2) rarely prohibited; and (3) often facilitated.

The study focuses in particular on mechanisms regulating language use, demonstrating that these can entail the promotion of certain languages or prohibitions or restrictions on others. It emerges as well that different norms are frequently prescribed for public service and private sector broadcasting. The study also examines a wide range of other factors affecting diversity of language use in broadcasting, including:

- official/State recognition of specific languages
- policy goals of safeguarding or promoting certain languages or of strengthening language forms
- establishment, ownership and editorial control of broadcasting outlets by linguistic minorities
- access to broadcasting services (especially public service broadcasting) at the national, regional and local levels
- quotas and other provisions governing minority-language programming
- licensing provisions
- financing and tax regimes
- transfrontier considerations

The study comprises a wealth of information gathered by a vast network of country experts. A detailed comparative overview presents the trends identified in States throughout the OSCE region against the background of existing international legal norms. Individual country reports document and contextualise formal prescriptions and proscriptions of language and other measures affecting the use of minority languages in the audiovisual sector. It is hoped that the study will prove a valuable research resource for everyone with an interest in the issues at stake and that it will facilitate the task of identifying and promoting "best practices" as regards any regulation of language use in the broadcasting sector. ■

**Tarlach McGonagle**  
Institute for  
Information Law (IViR)  
University of Amsterdam

● "Minority-Language Related Broadcasting and Legislation in the OSCE", T. McGonagle, B. Davis Noll & M. Price, Eds., Study commissioned by the OSCE High Commissioner on National Minorities, carried out by the Programme in Comparative Media Law and Policy (PCMLP), Oxford University and the Institute for Information Law (IViR) of the University of Amsterdam, April 2003 (published: September 2003), available at: <http://merlin.obs.coe.int/redirect.php?id=8977>

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

● **Publisher:**

European Audiovisual Observatory  
76, allée de la Robertsau  
F-67000 STRASBOURG  
Tel.: +33 (0)3 88 14 44 00  
Fax: +33 (0)3 88 14 44 19  
E-mail: [obs@obs.coe.int](mailto:obs@obs.coe.int)  
<http://www.obs.coe.int/>

● **Comments and Contributions to:**  
[IRIS@obs.coe.int](mailto:IRIS@obs.coe.int)

● **Executive Director:** Wolfgang Class

● **Editorial Board:** Susanne Nikoltchev,  
Co-ordinator – Michael Botein, The Media

Center at the New York Law School (USA) – Harald Trettenbrein, Directorate General EAC-C-1 (Audiovisual Policy Unit) of the European Commission, Brussels (Belgium) – Alexander Scheuer, Institute of European Media Law (EMR), Saarbrücken (Germany) – Bernt Hugenholtz, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Christophe Poiré, Media Division of the Directorate of Human Rights of the Council of Europe, Strasbourg (France) – Andrei Richter, Moscow Media Law and Policy Center (MMLPC) (Russian Federation)

● **Council to the Editorial Board:**  
Amélie Blocman, *Victoires Éditions*

● **Documentation:** Alison Hindhaugh

● **Translations:** Michelle Ganter (co-ordination) – Brigitte Auel – France Courrèges – Paul Green – Marco Polo Sàrl – Katherine Parsons – Stefan Pooth – Erwin Rohwer – Nathalie-Anne Sturlèse

● **Corrections:** Michelle Ganter, European Audiovisual Observatory (co-ordination) – Francisco Javier Cabrera Blázquez & Susanne

Nikoltchev, European Audiovisual Observatory – Florence Lapérou & Géraldine Pilard-Murray, post graduate diploma in *Droit du Multimédia et des Systèmes d'Information*, University R. Schuman, Strasbourg (France) – Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) – Sabina Gorini, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Natali Helberger, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) – Peter Strothmann, Institute of European Media Law (EMR), Saarbrücken (Germany)

● **Marketing manager:** Markus Booms

● **Typesetting:** Pointillés, Hoenheim (France)

● **Print:** Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76350 Baden-Baden (Germany)

● **Layout:** Victoires Éditions

ISSN 1023-8565

© 2004, European Audiovisual Observatory, Strasbourg (France)



MOSCOW MEDIA LAW AND POLICY CENTER, MMLPC



## COUNCIL OF EUROPE

### Committee of Ministers: Declaration on Freedom of Political Debate in the Media

On 12 February the Council of Europe's Committee of Ministers adopted a Declaration on freedom of political debate in the media. This is primarily a political message issued by the Committee of Ministers in the face of the excessive number of restrictions on the expression of opinion and the divulgence of information by political leaders or senior civil servants.

Without reproducing here the full text of the Declaration, it should be pointed out that it is based more particularly on Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and on the case-law of the European Court of Human Rights in Strasbourg.

The Declaration reaffirms the right of the media to broadcast negative information and opinions that criticise political figures and institutions – the State, the

**Christophe Poiré**  
Media Division  
Council of Europe

● Declaration on freedom of political debate in the media (adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers' Deputies), available at:

<http://merlin.obs.coe.int/redirect.php?id=8969>

EN-FR

### Parliamentary Assembly: New Recommendation on Public Service Broadcasting

On 27 January 2004, the Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 1641 (2004), entitled "Public service broadcasting". The Recommendation calls on the Committee of Ministers of the Council of Europe to "adopt a new major policy document on public service broadcasting" which would (i) take cognisance of relevant recent developments, and (ii) define "standards and mechanisms of accountability for the future of public service broadcasting". It suggests that this task could be addressed at the forthcoming Ministerial Conference on Mass Media Policy in Kyiv, Ukraine.

The Recommendation favours concerted action by the various limbs of the Council of Europe in order to "ensure proper and transparent monitoring, assistance and, where necessary, pressure, so that member states undertake the appropriate legislative, political and practical measures in

**Tarlach McGonagle**  
Institute for  
Information Law (IVIIR)  
University of Amsterdam

● Public service broadcasting, Recommendation 1641 (Provisional Edition), Parliamentary Assembly of the Council of Europe, 27 January 2004, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8954>

● Public service broadcasting, Report of the Committee on Culture, Science and Education (Rapporteur: Mr. Paschal Mooney), Parliamentary Assembly of the Council of Europe, 12 January 2004, Doc. 10029 (see also the Addendum to the Report of 21 January 2004), available at:  
<http://merlin.obs.coe.int/redirect.php?id=8956>

EN-FR

## EUROPEAN UNION

### European Parliament: Resolution on a Community Framework for Collective Management Societies

On 15 January 2004, the European Parliament adopted a resolution that concentrates mainly on the area of the collective exercise of copyright and neighbouring rights.

Government or any other organ of the executive, legislative or legal powers – and public officials. It states that the genre of humour and satire allows for a wider degree of exaggeration and even provocation, as long as the public is not misled about the facts.

It points out that information about the private lives of political figures and public officials may be revealed if it is in relation to a subject of public interest directly linked with the way in which they carry out their functions, or have done so in the past.

Political figures and senior civil servants should not enjoy greater protection of their reputation and their other rights than ordinary people in the event of the media infringing their rights. Any sanctions imposed on the media must be in proportion to the infringement; imprisonment should only be applied in extreme cases.

The Declaration has already aroused a good deal of interest, as witnessed by the speed with which it was translated by a number of governmental and non-governmental organisations, particularly in Armenia, Bosnia Herzegovina, Poland, Russia, Serbia-Montenegro, Slovakia, Turkey and Ukraine.

Some may regret that the Declaration is not bolder and more particularly that it does not adopt a clear, definitive position against prison sentences for defamation. Although it is true that the text does not prohibit absolutely the application of prison sentences, it does make the point that such sentences should only be applied if they are strictly necessary because the fundamental rights of another have been infringed, for example where the disputed expression constitutes incitement to racial hatred. ■

support of public service broadcasting". In addition, the Recommendation calls on the Committee of Ministers to "consider specific measures" aimed at aligning public service broadcasting legislation in Azerbaijan, Georgia, Russia and Ukraine with "European standards". Close cooperation with other international organisations is also advocated in the interest of upholding freedom of expression standards. The Committee of Ministers is asked to seek to help to achieve recognition (i) for audiovisual services as "more than simply a commodity" in the World Trade Organization (WTO) and General Agreement on Trade in Services (GATS) negotiations (see IRIS 2003-6: 5), and (ii) for public service broadcasting as a key feature of the Information Society at the World Summit on the Information Society (WSIS) (see IRIS 2004-2: 2, IRIS 2003-6: 2, IRIS 2003-3: 4 and IRIS 2002-2: 3).

Recommendation 1641 also suggests lines of action for the governments of Member States: to reaffirm "their commitment to maintaining a strong and vibrant independent public service broadcasting [*sic*] whilst adapting it to the requirements of the digital age"; to define appropriate frameworks within which public service broadcasting could function, adapt and modernise; to conceive of educational and training programmes for journalists which would be geared towards the digital media.

The Recommendation is based on an extensive, identically-titled report. ■

National provisions concerning practical copyright have already been substantially brought into line at Community level (see IRIS 2001-5: 3) and discussions are currently being held on the Directive regarding the enforcement of intellectual property rights (see IRIS 2003-3: 8). However, although the Commission has been holding

Lisanne Steenmeijer  
Institute for  
Information Law (IVIIR)  
University of Amsterdam

consultations since 1995 on this subject, there has still been no Community action in the area of the exercise of rights.

The goal of this resolution is to achieve harmonisation, democratisation and transparency as regards the activities of collective management societies in the European Union.

The resolution points out that the specific assistance support programmes for the collecting societies of new

● European Parliament resolution on a Community framework for collective management societies in the field of copyright and neighbouring rights (2002/2274(INI)), adopted on 15 January 2004, provisional text available at: <http://merlin.obs.coe.int/redirect.php?id=8959>

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

## NATIONAL

### AM – New Statute on Mass Information

On 14 January 2004, the President of Armenia signed the Statute of the Republic of Armenia “On Mass Information”. This statute was adopted on 12 December 2003 by the National Assembly (Parliament) of Armenia. The new act replaces the Statute “On the Press and Other Mass Media” of 8 October 1991.

The Statute regulates relations in the field of mass information, provides for guarantees for the right to freedom of speech, of accreditation of the press and of the right to refutation and reply. It also establishes the grounds for relief of a mass medium from liability.

The Statute defines a mass medium as a medium that disseminates information by means of physical carriers, broadcasting or public telecommunication networks (Article 3). According to these provisions, any website is considered as a form of mass media and subject to regulation under the Statute.

The most significant innovation of the Statute is the abolition of the institution of preliminary registration of mass media. A mass medium shall not be obliged to notify any governmental bodies before it becomes operational. The Ministry of Justice of the Republic of Armenia draws up the Administrative register of the existing mass media based on the compulsory deposit copies of mass media products.

The Statute prohibits dissemination of information under certain conditions (Art. 7). It is not allowed to disseminate information on state secrets, information inciting to commit criminal offences or information infringing on the private life of a person. At the same

Dmitry  
Golovanov,  
Moscow Media Law  
and Policy Center

● O massovoy informatsii (Statute of the Republic of Armenia “On Mass Information”), *Zakonodatel'stvo i praktika mass-media. Armeniya. # 1, 2004*, available at: <http://merlin.obs.coe.int/redirect.php?id=8976>

RU

### AT – Broadcasting Transmission Market Definitions

Alexander Scheuer  
Institute of European  
Media Law (EMR)  
Saarbrücken / Brussels

On 14 January 2004, the Austrian broadcasting regulator, *Kommunikationsbehörde Austria (KommAustria)* published the “Decree on the sector-specific regulation of relevant markets for broadcasting transmission ser-

● Decree of *Kommunikationsbehörde Austria (KommAustria)*, 14 January 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8966>

DE

Member States should be retained in order to increase the circulation of works, to strengthen the European heritage, and to increase legal certainty.

Currently, the statutes and practices of collecting societies differ significantly reflecting each country's own historical, legal and economic characteristics. To improve cooperation between societies, common tools and comparable parameters must be created. Uniform coding standards for works should be set up and implemented by the EU in order to simplify the exercise of rights. The activities of the collective societies must be coordinated, and the establishment of minimum standards is essential for their effective functioning.

The resolution calls for, *inter alia*, arbitration mechanisms throughout the European Union dealing with disputes between all parties involved (rightsholders, collective societies, users). Furthermore, it underlines the need to find an appropriate procedure for the cross-border settlement of incompatible decisions in different Member States. ■

time, unlike the previous act the new Statute does not stipulate conditions for the suspension and termination of functioning of a mass medium.

The Statute regulates in detail the accreditation of journalists (Article 6). A mass medium entity has the right to submit an application to any governmental body for the accreditation of its journalists, and the governmental bodies are obliged to accredit such a journalist within five days. The absence of rules of accreditation in a governmental body cannot serve as grounds for a refusal to accredit the journalist.

As compared with the old law, the new law establishes more grounds for relief of the mass media outlets from liability (Art. 9). A mass medium entity can be released from liability for dissemination of any kind of information if this information originally came from a news agency; if this information is the literal or fair reproduction of public speeches, of official governmental documents, of the texts from other mass media, or represents “author's works” – all requiring due reference to the source of information.

One of the important innovations in the Statute is the introduction of the concept of public interest. According to Article 4 the journalist is admitted as an “executor of public duty” and is “under the protection of the legislation of the Republic of Armenia”. A mass medium outlet and a journalist have the right to refuse to disclose a source of information in a criminal court if the public interest prevails in undisclosed this source (Article 5). It is also permitted to disseminate information that was obtained with the use of a hidden camera or information concerning the private life of any person if it is necessary for the protection of the public interest (Article 7). A mass medium outlet shall be released from liability for the dissemination of secret information if the dissemination of such information is necessary for the protection of the public interest (Article 9). ■

vices to deliver broadcast content to end users”. This marked the end of the consultation process that began last summer (see IRIS 2003-9: 6) and of the related coordination procedure.

Two markets relevant to *ex ante* regulation are defined: the market for terrestrial transmission of FM radio and the terrestrial television broadcasting market. The Decree entered into force on 16 January. ■

## AT – Digitisation Plan Published

On 5 February 2004 the Austrian broadcasting regulator, *Kommunikationsbehörde Austria (KommAustria)* published the digitisation plan for the introduction of digital terrestrial television. The plan, which is based on Art. 21.5 of the *Privatfernsehgesetz* (Private Television Act), comprises the strategy proposed by *KommAustria* for the introduction of digital terrestrial television (*DVB-T*) throughout Austria, as well as a timetable for its implementation.

According to the plan, the transition will take place in four stages. The first (preparatory) phase, which began in

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

● Newsletter Nr. 1/2004 of the RTR, Broadcasting section, 5 February 2004, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8965>

DE

2003 and will conclude at the end of 2005, comprises frequency planning and coordination, as well as the setting up of DVB-T test operations. In early 2005, alongside preparatory investigations and studies, the invitation of tenders for multiplex provision will be prepared and issued. In the second phase in 2006, the main task will be to build up the network in the main conurbations. This will be carried out by the multiplex licence-holder. The aim is to reach 60% of the population one year after the licence comes into force. Between 2007 and 2010, the third stage will involve the regional transition, with analogue frequencies being switched off. Both analogue and digital signals will be transmitted in individual regions for 6 to 12 months, with programme providers involved in the switchover process. From 2010, the fourth stage will comprise the invitation of tenders and allocation of additional multiplex platforms. The objective is to reach more than 90% of the population (fixed antennae) with one multiplex service, with another two or three platforms reaching 70% with fixed antennae and 40% with portable indoor antennae (TV reception in homes using a small aerial). Any additional services will depend on their economic feasibility.

According to *KommAustria*, the digitisation plan represents the publication of the Austrian transition strategy required by the eEurope 2005 Action Plan. ■

## BA – Agreement Reached over Subscription Fee

The public service broadcasting stations, consisting of one state-level broadcaster and two entity-based broadcasters, finally agreed on an appropriate way of collecting the subscription fee, officially named "subscription tax". The fee is based on the possession of radio and TV sets. This form of license fee funding should – in opposite to a system of funding from the state budget – ensure that broadcasters remain independent of political influence and control.

Despite that, the Model Law on Public Service Broadcasting is still in its pending stage (see IRIS 2004-1: 9), an arrangement dealing with the subscription tax has been reached by both entities – the Federation of Bosnia-Herzegovina and Republika Srpska. Starting from February 2004, the subscription fee of BAM 6 (local currency unit, equal to EUR 3) will be included in the telecommunication bills of fixed phone lines without the option of separate payment. This solution should

Dusan Babic  
Media Researcher  
and Analyst  
Sarajevo

● Press release of the AEM of 13 February 2004

EN

substantially improve the problematic financial situation of all of three public broadcasters, as the rate of paid phone bills is very high (close to 95 percent). Before, the fee had been collected via electricity bills and the number of households paying the tax fell below 30 percent (see IRIS 2003-4: 6). The level of non-payment represent a real threat for the three public broadcasters which are facing economic and financial collapse.

The *Asocijacija elektronskih medija* (Association of Electronic Media –AEM) recently issued a press release requesting 20 percent of the paid subscription fee to be re-allocated to commercial broadcasters as their programming also would be public oriented and as such practice has already been applied in many Western European countries. Besides, the current Law on Public Service Broadcasting, which has been imposed by the High Representative (see IRIS 2002-6: 7), prescribes that public broadcasters are obliged to fill at least 10 percent of the total broadcasting time with programs bought from commercial broadcasters. The last (fourth) line of Article 23 of the Law reads that such obligation will be in place for two years after the entering into force of this law, i.e. until 24 May 2004. ■

## CH – Communications Commission Issues Partial Ruling on Unbundling

In a decision published on 19 February 2004, the *Eidgenössische Kommunikationskommission* (Federal Communications Commission - *ComCom*) ruled that under current legislation, a service provider with a dominant market position may be obliged to unbundle the last mile.

*ComCom* therefore agreed with the *Bundesrat* (Council of Ministers), which considered the legal basis for the introduction of compulsory unbundling to be sufficient

Oliver Sidler  
Medialex

● Order of the *Eidgenössische Kommunikationskommission* (Federal Communications Commission), 19 February 2004 in the case *TDC Switzerland AG v. Swisscom Fixnet AG* concerning interconnection / Application for shared line access and full access to the local loop, available at:

<http://merlin.obs.coe.int/redirect.php?id=8887>

DE

and, last February, triggered the unbundling process by opening up the last mile to competition with immediate effect. To this end, the *Bundesrat* amended the *Fernmeldedienstverordnung* (Telecommunications Services Decree - *FDV*), making both types of unbundling (*Shared Line Access* and *Full Access*) subject to interconnection requirements.

*ComCom's* decision followed an interconnection-related case between *TDC Switzerland* ("*Sunrise*") and *Swisscom* concerning the unbundling of the local loop. The dispute initially only concerned whether there was a legal basis for such unbundling. *ComCom* decided that there was. *Swisscom* is expected to challenge the decision before the *Bundesgericht* (Federal Appeal Court), because it disputes the current legal basis for unbundling and considers local loop unbundling to be an intrusion on its right of ownership. ■

## CZ – Updated Digital TV Plan

The Czech Republic is likely to introduce digital terrestrial television this year, or by 2005 at the latest.

In January this year, by the decision of the Broadcasting Council, the DVB-T licences (Digital Video Broadcasting – Terrestrial) were extended for 2004. These licences are currently held by the Czech Digital Group and *Ceske Radiokomunikace*. Digital broadcasts by these two companies can be received in and around the capital city, Prague. This is a trial service, carrying the channels operated by the Czech analogue terrestrial TV companies.

Jan Fučík  
Broadcasting Council  
Prague

● Aktualizovaná koncepce přechodu na zemské digitální rozhlasové a televizní vysílání v České republice (Updated plan for the transition to digital broadcasting in the Czech Republic), press release of the Ministry for Information Technology, 20 January 2004, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8978>

CS

## DE – Ruling on Public Dissemination of Copyright Photographs

In a recently published judgment, the *Oberlandesgericht Köln* (Cologne Appeal Court - *OLG*) decided in a dispute between a photographer (plaintiff) and the commissioner of a photograph (defendant) that the latter was not entitled under current copyright law (Art. 60 of the *Gesetz über Urheberrecht und verwandte Schutzrechte* (Act on Copyright and Related Rights - *UrhG*)) to disseminate a photograph on the Internet without the photographer's consent.

On the instructions of a publishing firm, the plaintiff had taken photographs of the managing director of the defendant, a limited company (*GmbH*), to be used in the company's publicity. After the contact prints had been sent, the defendant had ordered a few passport photographs of the managing director and used these on various Internet pages. The plaintiff took legal action against the company, claiming damages and seeking an injunction. The *Landgericht Köln* (Cologne District Court) essentially upheld the complaint in the first instance, at

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

● Judgement of the *OLG Köln* (Cologne Appeal Court) of 19 December 2003, case no.: 6 U 91/03

DE

## DE – Unauthorised Recording Punishable

In February, all the parties in the *Bundestag* (Parliament) agreed on a common Bill that makes unauthorised and secret filming a punishable offence. In a corresponding amendment of the *Strafgesetzbuch* (Criminal Code - *StGB*), the protection of privacy will be increased as the existing ban on sound recordings is replaced with the new rule.

Anybody who, without permission, takes or transmits

Alexander Scheuer  
Institute of European  
Media Law (EMR)  
Saarbrücken / Brussels

● Bill of 10 February 2004, *Bundestag* doc. no. 15/2466; available at:  
<http://merlin.obs.coe.int/redirect.php?id=8968>

DE

The *Ministerstvo informatiky* (Ministry for Information Technology) has recently proposed an updated plan for the transition to digital terrestrial broadcasting in the Czech Republic. It states that two digital terrestrial TV multiplexes should be established by the end of 2004. Each multiplex will carry four television channels. There is already sufficient capacity for one multiplex, covering 65% of the population, and for a second multiplex with 50% coverage. These coverage rates will rise further so that up to 70% of the population can be reached by 2006. Frequency capacities will be allocated by the Czech Telecommunications Authority (CTU), while the Broadcasting Council is responsible for programming issues. The plan makes no provision for a separate multiplex for public service broadcasters. Each multiplex will include one public service channel. The date of the final switch-off of analogue signals has not been fixed. To begin with, radio will not be included in digital broadcasting. The multiplex operators must provide an electronic programme guide (EPG). Programme information services that are closely related to programmes broadcast will be treated as broadcasting. Under the capacity distribution between broadcasting and information services, non-programme-related services will represent approximately 12% of the multiplex capacity. In order to support digital TV, set-top boxes will be subject to a reduced level of VAT. ■

which point the defendant appealed to the *OLG* and demanded that the complaint be dismissed in full. It referred to Art. 60 *UrhG*, under which the commissioner of a portrait may reproduce it and distribute copies without payment.

However, the *OLG* did not think the conditions described in Art. 60 *UrhG* had been met. It ruled that Art. 60 only gave permission for portraits to be reproduced and distributed to individual third parties, not publicly distributed worldwide via the Internet. The provision served only to protect the right of the commissioner of the photograph and the person photographed (since these were not the same person) to use the portrait without payment and distribute it to third parties. However, since there was no right to public distribution that took priority over the exploitation rights of the copyright holder, the defendant was not entitled to publish the passport photos on the Internet. Nevertheless, since the *Landgericht* had also ordered the defendant to pay damages for the distribution of the picture on other Internet sites for which it was not responsible, the *OLG* thought the appeal was justified as the defendant could not be liable when it had committed no fault. The damages awarded by the first instance court were therefore reduced accordingly. ■

pictures of another person in their home or places that are not directly visible to the public, will be liable to punishment. Such actions will be deemed to be unauthorised unless the person pictured has given their consent. The offence is punishable if it infringes the privacy rights of the person concerned. The *Bundestag* has therefore taken the initiative begun last year when the *Bundesrat* (upper house) tabled a corresponding bill (see IRIS 2003-10: 13). According to the current provisions, it is only a punishable offence if illegally obtained pictures are made accessible to a third party; this gap in legal protection will be closed by the proposed amendment of the *StGB*. ■

## DE – Press Council Activity Report on Editorial Data Protection

On 29 January 2004, the *Deutsche Presserat* (German Press Council) published its first activity report on the theme of “editorial data protection”.

The German Press Council is a self-regulatory body for the printed press. Under the amendment to the *Bundesdatenschutzgesetz* (Federal Data Protection Act - *BDSG*), which entered into force on 1 June 2001, it is responsible for monitoring the implementation of voluntary data protection guidelines related to the gathering, processing and use of personal data in the media. The legal basis set out in Art. 41.1 *BDSG* is aimed at reconciling the protection of the individual's personal data (Art. 2.1 in con-

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

● 2004 Report of the *Deutsche Presserat* (German Press Council) on editorial data protection

● Press release of the German Press Council, 29 January 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8971>

DE

## DE – Split-Screen Advertising Admissible Under Media Law

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

According to an initial analysis by the *Gemeinsame Stelle Programm, Werbung und Medienkompetenz* (Joint Programme, Advertising and Media Office) of the *Landesmedienanstalten* (regional media authorities), so-

● Press release of the *Gemeinsame Stelle Programm, Werbung und Medienkompetenz*, (Joint Programme, Advertising and Media Office), 13 February 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8967>

DE

## DE – “Judas-Game” Title Prohibited

On 5 February 2004, the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Authority - *BLM*), the responsible regional media authority, prohibited the TV broadcaster *Kabel 1* from broadcasting its “Judas Game” show under that name. Its decision was based on the belief that the programme title was likely to offend against religious sentiments and stir up anti-Semitic

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

● *BLM* press release, 5 February 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8979>

DE

## FR – Conseil d’Etat Bans Film for under-18s

On 4 February, the *Conseil d’Etat* banned the showing of the film *Ken Park* to anyone under the age of 18. The film, made by the American Larry Clark, came out in France in October last year. On 6 October the French Minister for Culture had issued an exploitation licence that prohibited the film being shown to anyone under the age of 16; this licence has therefore been “partly” cancelled.

Under Article 19 of the Cinematographic Industry Code, the screening of films in French cinemas is subject to the grant of an exploitation licence issued by the

Minister, after consultation with the Film Classification Board. According to the Decree of 23 February 1990, amended by the Decree of 12 July 2001 following the case of the film *Baise-moi* (see IRIS 2000-7: 8 and IRIS 2001-8: 13), the Board has the choice of six categories – authorisation for showing to the general public, authorisation for showing to anyone over the age of 12, 16 or 18, listing as a pornographic film or a film inciting violence and as such not to be shown to anyone under the age of 18, and a total ban.

Promouvoir, an association that defends Judeo-Christian and family values, which was instrumental in

called split-screen advertising on TV does not breach media legislation.

Split-screen advertising is when the programme itself and advertisements are broadcast at the same time. According to Article 7.4 of the *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting), advertising must be clearly separated from other programme items by optical means and must be announced as such.

This assessment was based on programme analysis carried out by the *Landesmedienanstalten*, in which more than 1,000 cases on 17 commercial TV channels were investigated in September 2003. ■

feelings. In the past, especially during the Nazi era, the name “Judas” had been synonymous not only with a liar and traitor, but also with the image of the Jewish people.

The broadcaster *Kabel 1* subsequently renamed the game show, which involves finding out which of six candidates is telling a fictitious story, the “J-Game”. In a press release, it said that the name of the show was already being used in other countries, where there had been no criticism or complaints. Nevertheless, out of respect for the views of the Central Jewish Council in Germany, which had also criticised the programme's name, it agreed to change the title. ■

Minister, after consultation with the Film Classification Board. According to the Decree of 23 February 1990, amended by the Decree of 12 July 2001 following the case of the film *Baise-moi* (see IRIS 2000-7: 8 and IRIS 2001-8: 13), the Board has the choice of six categories – authorisation for showing to the general public, authorisation for showing to anyone over the age of 12, 16 or 18, listing as a pornographic film or a film inciting violence and as such not to be shown to anyone under the age of 18, and a total ban.

Promouvoir, an association that defends Judeo-Christian and family values, which was instrumental in

Amélie Blocman  
Légipresse

bringing about the *Conseil d'Etat* decision (as well as its decision in 2000 in the case of *Baise-moi*), claimed that the Minister should have put *Ken Park* on the list of pornographic films or films inciting violence on the basis of the degrading pornographic scenes it contains and one

● *Conseil d'Etat*, 4 February 2004, Association Promouvoir, available at: <http://merlin.obs.coe.int/redirect.php?id=8883>

● Decree no. 2003-1163 of 4 December 2003 amending Decree no. 90-174 of 23 February 1990 adopted for the application of Articles 19 to 22 of the Cinematographic Industry Code and concerning the classification of cinematographic works, available at: <http://merlin.obs.coe.int/redirect.php?id=8885>

FR

## FR – MPs Adopt Bill on Electronic Communications and Audiovisual Services at First Reading

The National Assembly adopted the bill on electronic communications and audiovisual services, transposing the “telecoms package” (see IRIS 2003-5: 15 and IRIS 2003-6: 9) at its first reading on the evening of Thursday, 12 February 2004. Apart from slight changes concerning networks and telecoms services, the text more importantly contains new legislative provisions concerning the audiovisual sector in line with recent economic and technological developments, thereby effecting a thorough reform.

The bill contains a series of amendments authorising the financing of local television stations by local authorities and proposing greater flexibility in anti-concentration arrangements and tax reduction measures.

It also lays down a framework of regulations for broadband television. It relaxes considerably the constraints of regulations hampering the development of cable and includes a series of amendments instituting must-carry

Amélie Blocman  
Légipresse

● Bill on electronic communications and audiovisual communication services, adopted by the National Assembly at its first reading on 12 February 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8886>

FR

## FR – France 2 Warned that they Must Provide Information Honestly

On 12 February the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body - CSA) decided to serve formal notice on the national public-service television channel France 2 ordering it to abide by its obligation to inform viewers properly and broadcast honest news, in accordance with Article 43-11 of the amended Act of 30 September 1986 and Article 2 of its terms of reference, appended to Decree no. 94813 of 16 September 1994.

On 3 February, as Alain Juppé, leader of the *Union de la Majorité Présidentielle* political party, was preparing to reveal live on the 8 o'clock news on the national private channel TF1 his decision to stay in politics pending appeal against a court order that had just resulted in his becoming ineligible, the newscaster on France 2 opened the news programme with the announcement, against the written headline “A. Juppé stands down”, that Mr Juppé, who is an MP and mayor of Bordeaux, had “decided to distance himself from political life to devote himself to the legal battle”, adding that the withdrawal

Amélie Blocman  
Légipresse

particularly violent scene (in which an adolescent stabs his grandparents to death in their sleep). The *Conseil d'Etat* considered, however, that although the film included one scene in which the sexual activity was not simulated and several violent scenes, taking its theme and the conditions of its production into consideration, it was not actually pornographic and did not specifically incite violence. On the other hand, because of the sex scene which the *Conseil d'Etat* found particularly crude and explicit and other scenes in the film that represented adolescents in a combination of sex and violence, the Minister had applied the Decree of 3 February 1990 wrongly by prohibiting the film from being shown to anyone under the age of 16 rather than 18. This legal episode comes two months after the gazetting of a decree abolishing the need for a qualified majority of the Classification Board to be able to ban the showing of a film to under-18s and reinforcing the representation of family-value interests.

The film was banned for showing to under-18s in Finland, Japan, Italy and Norway, and there was a total ban in Australia. ■

requirements for public-sector terrestrially broadcast channels on all broadcasting media (cable, satellite, broadband) and entitlement of private terrestrially broadcast channels to be broadcast on any media at their request and at their expense.

The text also reinforces the powers of the *Conseil supérieur de l'audiovisuel* (audiovisual regulatory body - CSA), firstly by empowering it to settle disputes between channel editors and distributors, and secondly by giving it the means check and penalise channels outside Europe broadcasting by satellite to Europe in respect of programmes that seriously infringe human dignity. The Government was nevertheless careful that these prerogatives should not encroach on those of other regulatory authorities, or on those of the *Conseil de la concurrence* (competition board).

The text also provides the necessary details to enable the CSA to have the clear means for organising the launch of terrestrially broadcast digital television, the maximum number of terrestrially broadcast digital channels controlled by any one operator having been changed to seven. Lastly, it lays down the conditions for the launch of digital radio in France. The text will be examined by the Senate on 13, 14 and 15 April. ■

would be gradual. This false announcement of Mr Juppé's withdrawal from the political scene provoked nothing short of a crisis at the public-service channel. One week after the incident, the editorial team adopted by more than a 65% vote a motion of defiance proposed by the French society of journalists against the news management and the news programme team. The vote resulted in the resignation of the person responsible for news programmes and the suspension of the newscaster for two weeks. On a more fundamental level, the incident raises the question of competition between France 2, in the public sector, and its “rival”, TF1, in the private sector. The former Minister for Culture, Catherine Tasca, felt that France 2 should not be allowed to drift into imitation and chase after audience figures, an attitude that forced the channel to make choices that were risky to say the least. Indeed, the opening paragraph in the preamble of the channel's terms of reference recalls that the attention the national programme companies pay to audience figures reflects demands that they should respect the public's desire for more than a purely commercial performance.

● Deliberation adopted by the *Conseil supérieur de l'audiovisuel (CSA)* on 12 February 2004 to serve formal notice on the company France 2

FR

## GB – New OFCOM Content Board Adjudicates in Television Advert Complaint

OFCOM is the UK communications industries regulator. It was established by the Communications Act 2003 and deals with television, radio, telecommunications and wireless communications services.

One of its Boards is the Content Board, a committee of the main Board. It deals mainly with broadcasting (radio and television) on issues of quality and standards. As regards content issues, these are divided into three categories or "tiers": "Tier 1 concerns negative content regulation. It covers matters principally concerning harm and offence, accuracy and impartiality, fairness and privacy. Tier 2 relates to quantitative matters, such as quotas for independent television production, regional production and original EU/UK production. Tier 3 covers the public service broadcasters, and in this context OFCOM has particular responsibility for ITV, Channel 4 and Five."

Recently, the Content Board considered the appeal by The Number (UK) Ltd in respect of a complaint laid by the athlete David Bedford. The Number (UK) Ltd advertises its new telephone number inquiry service on television.

At issue was the claim that the adverts used a caricature of the athlete without his permission, in contravention of Rule 6.5 of the current Advertising Standards Code.

David Goldberg  
*deeJgee*

Research/Consultancy

● The Ofcom Content Board Decision is available at:  
<http://merlin.obs.coe.int/redirect.php?id=8875>

● Advertising Standards Code Section 6: Harm and Offence, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8876>

## HU – Decision concerning Discrimination and Insult on Religious Grounds

On 21 January 2004, the *Országos Rádió és Televízió Testület* (National Radio and Television Commission of Hungary – ORTT) stated that radio "Tilos" – a non-profit broadcaster operating in the area of Budapest – has violated the provisions of the Broadcasting Act (Act No I of 1996 on Radio and Television Services) protecting groups of individuals against discrimination and insults on religious grounds. In addition to issuing the statement the ORTT also imposed a set of sanctions in the decision, consisting of the suspension of the broadcasts for 30 days, the exclusion of the radio from the financial support available from the Broadcasting Fund for six months and of the delivery of a written – the so called "last" – warning.

Márk Lengyel  
*Legal Expert*  
Budapest

The legal action was a reaction to an incident that happened in a radio programme on Christmas Eve. In this live programme one of the presenters said that he "would

● Decision No. 52/2004. of the ORTT

HU

## IE – European Convention on Human Rights Becomes Part of Irish Law

The European Convention on Human Rights Bill, passed by the *Oireachtas* (Irish Parliament) in June 2003,

Thus after hearing the chairman of the public-sector France Télévision group and the managing director of France 2, the CSA decided in plenary session to serve formal notice on the channel to abide by its statutory and agreed obligations, on pain of incurring the sanctions provided for in Articles 48-2 et seq. of the amended Act of 30 September 1986 (broadcasting of a communiqué or payment of a financial penalty). This is the first time the CSA has issued formal notice to an eight o'clock news programme on any channel. ■

Rule 6.5 states that "With limited exceptions, living people must not be portrayed, caricatured or referred to in advertisements without their permission."

The Board found that the use of such caricature was not "fortuitous", even if The Number (UK) Ltd had neither originally, or finally, intended to caricature Bedford. One of the complicating issues was that David Bedford did not lay a complaint till the adverts had been running for some six months.

The Board decided against making an order that would have had the effect of imposing a ban on such adverts. It said that this would be "disproportionately damaging to The Number compared with any harm to the feelings or reputation of David Bedford suffered as a result of the advertisements."

The Content Board's decision reflected the fact that the athlete had delayed in making a complaint and that the Board "made no finding as to whether The Number set out specifically to caricature David Bedford... [and also] found no evidence that David Bedford had necessarily suffered actual financial harm as a result of the caricature."

The Board decided that the consequences of the adverts – "any harm suffered by David Bedford as a result of the advertisements, or of the public believing that he had endorsed the 118 118 service, or indeed in the public being misled on this issue" – could be sufficiently addressed by the publication of its findings that there had been a contravention of Rule 6.5 and that David Bedford had not endorsed The Number (UK) Ltd's service.

The decision is also without prejudice to David Bedford seeking redress against The Number (UK) Ltd through the courts. ■

exterminate all Christians". The sentence was preceded by other blasphemous and vulgar statements concerning Christians and Christianity. It should be noted that radio "Tilos" is mainly known for its liberal policy governing programme producing. Following the incident the radio announced that it regretted what had happened, and immediately dismissed the contributor who made the quoted statement.

The case has sparked widespread protests against the broadcaster, and also triggered debates on limits of freedom of expression among media professionals. Concerning the decision of the ORTT, the broadcaster announced that despite the radio being aware of the legal consequences of the case it regarded the sanctions disproportionate. The radio therefore brought an appeal to the court against the decision.

The police also began an inquiry into the case in order to determine whether the statement constitutes incitement to hatred – an offence under the Hungarian Penal Code. However, following a recent official statement of the competent prosecutor's office, it is expected that this proceeding will cease. ■

came into operation on 1 January 2004. Previously, although Ireland had played an active role in the drafting of the Convention and had been one of the first states to ratify it, it had not incorporated the Convention into domestic law. Ireland had been a dualist state in

Marie McGonagle  
Faculty of Law  
National University  
of Ireland  
Galway

that the Convention, while binding on Ireland, was not binding in Ireland. Irish citizens who wished to avail of

● **European Convention on Human Rights Act 2003, number 20 of 2003, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=8962>

## IE – New Film Guidelines

Marie McGonagle  
Faculty of Law  
National University  
of Ireland  
Galway

On taking office, the new film censor, appointed in April 2003, declared that he wished to move away from a restrictive censorship process to a more positive guidance system. The first film he banned was Jonas Akerlund's *Spun*, which portrays a life of sex and drugs. However, his decision was overturned in a unanimous decision of the appeals board, which passed it without cuts but with an 18 certificate. Since then the film censor has announced plans to overhaul the current age classification system, which acts as a guide to parents. The censor plans to launch a website listing every movie

- "Film ban overturned by appeal board", *The Irish Times* 31 July 2003
- "Cinemas set record", *The Irish Times* 22 January 2004
- "Censor clears way for Gibson film about Christ", *The Irish Times* 14 February 2004

## IE – Broadcasting Priorities for EU Presidency

Marie McGonagle  
Faculty of Law  
National University  
of Ireland  
Galway

As Ireland currently holds the presidency of the EU, the Minister for Communications has indicated that the protection of minors in the area of broadcasting will be one of his main priorities. The EU Commission is due to

● "Protection of Minors a Priority During EU Presidency - Dermot Ahern", Press Release of the Department of Communications, Marine and Natural Resources of 26 January 2004, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8974>

## IE – Broadcasting Ban on Religious Advertising to Continue

Marie McGonagle  
Faculty of Law  
National University  
of Ireland  
Galway

Following the decision of the European Court of Human Rights in *Murphy v Ireland* (judgment of 10 July 2003, see IRIS 2003-9: 3) that Ireland was not in breach of Article 10 ECHR, the Minister for Communications has decided to retain the ban on religious advertising. The ban had been invoked on a number of occasions to refuse advertisements, including the 2002 "Power to change" advertisements sponsored by the main Christian religions in the State (see IRIS 2003-2: 11). As a result, in March 2003, prior to the Court's decision, the Minister had initiated a public consultation on the issue, which resulted in over 150 submissions. A more flexible system of regulation did not appear feasible, however. The choice, therefore, according to the Minister, was "whether to

● "Dermot Ahern Retains Ban on Religious Advertising", Press release of the Department of Communications, Marine and Natural Resources of 29 January 2004, and editor's note explaining the statutory basis for the ban, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8975>

the Convention had to take their case to Strasbourg. Now, although the Convention has been incorporated into Irish law at sub-constitutional level, arguments based on the Convention can be advanced directly in Irish courts. The commitment to incorporate the Convention was given in the Belfast Agreement, which emanated from the peace process in Northern Ireland in 1998. The incorporation took place at sub-constitutional level because the Government was of the view that the fundamental rights provisions of the Irish Constitution already offered extensive protection. However, it is widely perceived by lawyers that Article 10 offers greater protection to the media in areas such as defamation. Article 10 is expected to have considerable impact, therefore, on aspects of Irish law affecting journalists and broadcasters. ■

passed by his office and indicating the level of sex, violence or bad language in them. Movie posters, which are already required to carry warnings as to content, will also come under the new regime. The censor has commissioned research to find out what viewers want by way of information and advice and will act accordingly. He has since passed, uncut with a 15PG (parental guidance) certificate, the Mel Gibson film, *The Passion of the Christ*. The certificate is accompanied by a caution from the censor that the film contains scenes of explicit violence that may disturb some viewers. That caution must be carried also on all advertising for the film. The censor also issued a statement elaborating on the reasons for his decision.

Meanwhile, cinema admissions in Ireland for 2003 increased by 1% over 2002 and represented the highest figures ever in the State. Total box office revenue also increased by 4%. ■

publish an update to the Recommendation on the Protection of Minors and Human Dignity in March with a view to a policy discussion on it at the meeting of the Council of Ministers in May. An informal Ministerial Council to be held in Ireland in early March will also discuss the future role of broadcasting in promoting and maintaining cultural diversity in an enlarged Europe. ■

leave in place a ban that has served us well for over forty years or throw open the airwaves to religious advertising which could result in those with the deepest pockets presenting an unchallenged message." On balance, he felt the ban should remain. Describing it as "a very emotive subject" and pointing out that advertising on radio and television "is significantly more intrusive than advertising in other media", the Minister emphasised that the ban does not preclude religious groups from gaining access to the broadcast media or from advertising in other media. Also, the Broadcasting Act 2001 permits advertisements that merely give information about a religious magazine or periodical being available for sale or about a religious event or ceremony taking place. It only precludes such advertisements if they address the merits or demerits of adhering to any faith or belief or becoming a member of any religion. As a result of the European Court's decision in *Murphy* there was no external pressure on the Minister to remove the ban and, for the reasons stated above, he found the case for retention persuasive. ■

## IT – Incentives for T-DVB and C-DVB Decoders and Broadband Access

Maja Cappello  
Autorità per le  
Garanzie nelle  
Comunicazioni

On 24 December 2003, the Italian Parliament adopted the national budget for 2004 (*Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2004)*, Act of 24 December 2003, no. 350) and set up a fund for the promotion of purchases or rentals of decoders for cable and terrestrial digital tele-

● **Law of 24 December 2003, no. 350, "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2004)" (law on the national budget) published in the Official Gazette of 27 December 2003, no. 299, s.o. no. 189, available at:** <http://merlin.obs.coe.int/redirect.php?id=8877>

● **Decree of 30 December 2003, "Contributo per la televisione digitale terrestre e per l'accesso a larga banda ad Internet ai sensi dell'art. 4, commi 1 e 2 della legge 24 dicembre 2003, n. 350" (Contribution to digital terrestrial television and to broadband Internet access pursuant to Article 4 paragraph 1 and 2 of the law of 24 December 2003, no 350), published in the Official Gazette of 23 January 2004, no. 18, available at:** <http://merlin.obs.coe.int/redirect.php?id=8878>

IT

## IT – TV Channels Exceeding Media Concentration Rules Temporarily Authorised to Continue Broadcasting

On 24 December 2003, the Italian Government approved decree-law no. 352, introducing urgent provisions concerning the transition period accorded to analogue terrestrial TV channels exceeding the media concentration rules (*RaiTre* and *Rete4*), established by the 1997 Communications Act (see IRIS 1997-8: 10 and IRIS Special "Television and Media Concentration" 2001, page 47).

The decree-law intervenes as a step in the legislative process leading to the approval of a new Media Act. This process was interrupted on 15 December 2003, when the President of the Republic rejected parts of the Government's bill (see IRIS 2002-10: 10), which had been definitively approved by both chambers of Parliament on 2 December 2003, on the grounds that it was not in line with the judgment of the Constitutional Court that had declared the Communications Act partly unconstitutional (see IRIS 2003-3: 13).

The Italian Constitution provides the President of the Republic with the power to reject a law already approved by both chambers of Parliament if the law appears to be unconstitutional: in that case, the Parliament has to revise the text, and once approved and even if it remains identical to that which had been rejected, the law is definitive.

The new Media Act had, *inter alia*, charged the *Autorità per le garanzie nelle comunicazioni* (the Communications Authority - AGCOM) with verifying within 31 December

Maja Cappello  
Autorità per le  
Garanzie nelle  
Comunicazioni

● **Decreto-legge (Decree law) of 24 December 2003, no. 352, Disposizioni urgenti concernenti modalità di definitiva cessazione del regime transitorio della legge 31 luglio 1997, n. 249 (Urgent provisions relating to the final termination of the transitional arrangements of law no. 249 of 31 July 1997) published in the Gazzetta Ufficiale della Repubblica Italiana (Official Gazette of the Italian Republic) no. 300 of 29 December 2003, available at:** <http://merlin.obs.coe.int/redirect.php?id=8949>

● **Conversione in legge, con modificazioni, del decreto-legge 24 dicembre 2003, n. 352, recante disposizioni urgenti concernenti modalità di definitiva cessazione del regime transitorio della legge 31 luglio 1997, n. 249 (amendments approved in the conversion law), available at:** <http://merlin.obs.coe.int/redirect.php?id=8950>

IT

vision (C-DVB and T-DVB) sold or rented from 1 January 2004 and contracts for broadband access to the Internet signed after 1 December 2003. In the first case, the public contribution is of EUR 150 per consumer out of a total fund of EUR 110 million, and in the second case, EUR 75 out of a total fund of EUR 30 million, but in no case can any consumer benefit from both contributions.

The procedural terms have been established by a decree of the Minister of Communications of 30 December 2003.

To benefit from T-and C-DVB decoder incentives, consumers must have paid the appropriate annual fee to the public service broadcaster and get the decoder at the same time as they sign the contract for the services. For this purpose, contributions are given to interested consumers through the stores providing the services and having access to a special database served by the Ministry of Communications, where it is possible to verify that the annual fee has been paid and that no consumer gets more than one contribution. The discount on the price of the decoder is applied immediately in case of purchase, provided that the price of the decoder is higher than EUR 150, and gradually on the bills in case of rental. Contributions for broadband access are furnished directly to consumers by electronic communications' operators who apply them immediately in case of purchase of the apparatuses and as a discount on the bills in case of rental. The Ministry of Communications provides for reimbursement to the stores and operators concerned. ■

2004 whether the transition process towards digital terrestrial broadcasting was effectively increasing the level of pluralism in Italy, linking this analysis to three factors: the proportion of population that is reached by the new DTT networks, the presence on the market of decoders at accessible prices and the effective offer to the public of programmes differing from those that are broadcast on analogue networks.

In this regard, the President of the Republic claimed that the time frame for the analysis was too long, that no sanction was provided for in case of a negative outcome and that no final date had been indicated for the conclusion of the transitory period granted to *RaiTre* and *Rete4*.

Accordingly, the decree-law approved by the Government shortens the term from 31 December 2004 to 30 April 2004 and charges AGCOM with reporting its findings to the Parliament within 31 May 2004. Should the report prove that the above-mentioned criteria have not been satisfied, AGCOM may order the sale of parts of the undertakings or of their assets (see IRIS 2000-7: 7) or, alternatively, adopt the provisions defined by the Communications Act, i.e. *RaiTre* deprived of advertising incomes and *Rete4* transferred to satellite. As a result, the channels exceeding media concentration rules have been allowed to continue broadcasting until 31 May 2004, when AGCOM will have to report to the Parliament.

As the Constitutional Court had established that exceeding TV channels could not continue broadcasting after 31 December 2003 unless there had been relevant technological changes, such as the diffusion of digital terrestrial broadcasting, and that the Parliament had to establish the means to free the frequencies occupied by those channels, the Government had to approve urgent provisions in order to respect that term.

The decree-law was converted into law on 20 February 2004, when it was specified that the three conditions have to be satisfied at the same time taking into account existing market trends, that the coverage of digital terrestrial networks has to be at least 50% of the population and the decoder market to consider is the national one. ■

## IT – New Law on Cinema

The Legislative Decree setting forth new provisions in the field of cinematographic activities in Italy entered into force on 20 February 2004.

It establishes, under the Ministry for cultural assets and activities, a Commission for cinematography divided into two sub-commissions.

The first sub-commission will be in charge of the acknowledgment of the cultural interest, at the planning stage, of a movie. It will also decide on the maximum share of financial support to be allocated to such a movie, to be determined also on the basis of the proved artistic value of its authors.

The other sub-commission will verify, in respect of any work of acknowledged cultural interest, its substantial conformity to the original project as submitted to the other sub-commission. Furthermore, it will verify, in respect of all movies, the existence of the requisites necessary to obtain financial benefits, as well as the qualification of a movie as an art movie (i.e. "*film d'es-sai*").

The Decree also institutes information lists in which Italian film companies must enrol as a condition for obtaining financial benefits. Companies from other EU Member States having a branch or an agency in Italy are made equivalent to national undertakings, on the basis of reciprocity, if their activities are carried out mainly in Italy.

**Liliana Ciliberti**  
Masters Lecturer  
Universities of Milan  
Statale and Rome  
Sapienza

● **Decreto Legislativo 22 Gennaio 2004, n. 28, Riforma della disciplina in materia di attività cinematografiche (Legislative Decree of 22 January 2004, no. 28, New provisions in the field of cinematographic activities), published in the Official Gazette of 5 February 2004, no. 29, available at:**  
<http://merlin.obs.coe.int/redirect.php?id=8964>

IT

## NL – Subtitles Website Shut Down

By order of the *OM* (the Dutch Public Prosecutions Department), the *FIOD-ECD* (the Dutch Fiscal Intelligence and Investigation Service) shut down the Dutch website *ondertitels.nl*. The initiative to have the website shut down was taken by *Stichting BREIN*, the Foundation

**Lisanne Steenmeijer**  
Institute for  
Information Law (IViR)  
University of Amsterdam

● "**FIOD-ECD sluit [www.ondertitels.nl](http://www.ondertitels.nl)**" (*FIOD-ECD shuts down [www.ondertitels.nl](http://www.ondertitels.nl)*), *BREIN* Press Release of 11 February 2004, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8958>

NL

## NO – Court of Appeal Decision in Norwegian DVD Case

In its decision of 22 December 2003, the Norwegian Borgarting Appellate Court acquitted a young man, Jon Johansen, who had been prosecuted for breaking the Norwegian Criminal Code section 145 (2) by participating in breaking the technical protection system CSS used on DVD movies. The background of the case, and the acquit-

The conditions for the admittance of a film to the benefits provided for by the Decree are the acknowledgment of Italian nationality (such acknowledgement to be applicable to co-productions with EU Member States and, subject to a minimum share of 20% of the costs to be borne by the Italian producer, with third countries), its cultural or artistic or spectacular qualities, as well as adequate technical requirements, and the enrolment of the beneficiary undertaking in the information lists.

Subject to existing provisions regarding the ban on advertising tobacco products and a number of other conditions, the framing in a movie of trademarks and products no longer prevents it from admittance to the benefits.

A new Fund for film production, distribution, exhibition and technical industries substitutes the various previous funds for the financing of cinematographic activities. It will be managed by the Ministry for cultural assets and activities on the basis of agreements with credit institutions. During a transition period of twelve months, the Fund will continue to be managed by the *Banca Nazionale del Lavoro* (National Bank of Labour).

In respect of production activities, the Decree introduces objective (*automatici*) criteria for the determination of the admissible financing. Also the evaluation of the applications for the acknowledgement of the cultural interest of a movie will be based partially on objective (*automatici*) parameters.

The Decree provides for automatic contributions for the distribution of movies of acknowledged cultural interest in Italy. The amount of the contribution shall be proportionate to the number of theatrical admissions obtained by the same distribution company in respect of the distribution, in Italy, of movies of cultural interest in the previous year.

The Decree provides also for the financing of cinema exhibitors in the form, *inter alia*, of a reduction of the interest payable on loan agreements and financial leases. Further benefits are granted in respect of interventions to be realised in small towns upon condition that the cinema theatre or its owner undertakes to schedule a certain percentage of Italian or European movies.

Further Ministerial decrees will be adopted in order to implement the provisions laid down in the main Legislative Decree. ■

for the Protection of Rights of the Entertainment Industry in the Netherlands. Subtitles ancillary to over 5,000 films were available on the website in many languages and could be used in copied films. *BREIN* reports that the website was visited by over 40,000 users a day and that over 3,500,000 subtitles were downloaded from the site. By publishing the subtitles on the Internet without permission of the rightsholders, the website was infringing copyrights extensively. The author of the website has been charged with illegally publishing copyright material. ■

tal of Johansen by the court of first instance, are described in a prior IRIS article (see IRIS 2003-2: 15).

The Norwegian Criminal Code section 145 (2) makes it a crime to break a security measure or in similar ways to unlawfully access "data" or computer programs stored or communicated by electronic or other means. The court briefly stated that both DVD movies and the CSS-code itself constitute "data" in the context of section 145 (2). The main question was whether Johansen's gaining

access to such data had been "unlawful". The court discussed several alternatives that might make Johansen's acts "unlawful".

The first alternative was related to the function of the DeCSS decryption program. Johansen had bought all his DVD movies legitimately and was therefore within his full rights to play the movies. However, the court had to determine whether the additional gaining of access to movies in decrypted form, and hence the possibility of copying the movies, rendered possible by DeCSS, was "unlawful". Based on the wording of section 145 (2) and the corresponding doctrine, the court found that it was up to Johansen to establish that such use of DeCSS would be lawful.

On the basis of section 12 of the Norwegian Copyright Act (the exemption for private use copying), the court found such lawfulness established. Considering the three-step-test of the Berne Convention art. 9, the court concluded that section 12 – at least in a penal law context – allows reproduction of DVD movies for private use. It was emphasised that DVD discs generally are easily damaged, and that consumers therefore have reasonable grounds for making backup copies of lawfully acquired movies. Further, rejecting one of the prosecution's arguments, the court stated that unilateral labelling on the DVD cover, prohibiting reproduction, generally is not suf-

ficient under Norwegian law to deprive consumers of their "right" to make private-use copies.

The court then considered the second alternative: whether the decryption program itself had been unlawfully acquired. The decryption program had been developed by a German called "the nomad", utilizing, among others, the play keys from a Xing DVD player. In the court's view, the work performed by "the nomad" was reverse engineering (decompilation). It found that this reverse engineering was lawful according to section 39i of the Norwegian Copyright Act (decompilation in order to establish functional integration). (Despite the nationality of "the nomad", the court did not consider whether German law should be applied here). The court's argument on this issue was also, to some extent, based on the burden of proof.

The third alternative for the court to decide was whether the acquisition of the play keys as such had been unlawful. It found that these keys did not enjoy protection as such by section 145(2); the keys were part of the protection, while the decision of whether the access was unlawful had to be related to the movies.

As a result, the court concluded that Johansen had not unlawfully broken or circumvented a technical protection measure.

In addition, the court had to determine whether Johansen could be held liable for contributory infringement because of having aided, or attempted to aid, the use of DeCSS by others. In the case, the prosecution had not proven that other individuals had utilized DeCSS to copy unlawfully acquired movies. Thus, Johansen could not be held liable for contributory infringement. Still, the question remained whether he could be punished for attempted contribution, on the basis of publishing a program that made it possible for others to unlawfully access decrypted movies. The court admitted that DeCSS might be used for unlawful purposes, but, citing doctrine, it found that such a possibility was not sufficient as long as DeCSS also had a lawful use.

As a result, Johansen was acquitted. ■

**Thomas Rieber-Mohn**  
Norwegian Research  
Centre for  
Computers and Law  
University of Oslo

● Decision by Borgarting Appellate Court of 22 December 2003, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8879> (NO)  
<http://merlin.obs.coe.int/redirect.php?id=8881> (EN)

EN-NO

## PL – Draft Act on Cinematography

On 24 September 2003, the Government sent a draft Act on cinematography to Parliament, which held the first reading of it on 10 December 2003. After the reading the draft was sent to the Commission for Culture and Mass Media, which began its consultations at its meeting on 6 January 2004.

Taking into account that currently that the Act of 16 July 1987 (with subsequent amendments) regulating the cinematographic sector is not suited to the new market conditions, the government proposed a completely new, comprehensive draft bill. It is argued that it has as its main objective a change in the way cinematography is currently organised: adjusting to market conditions, not forgetting the necessity to financially support non-commercial, ambitious productions and creating conditions for the development of Polish film with mechanisms similar to those existing in other European countries. The draft also provides that commercial enterprises of the film industry (cinema owners and distributors selling film copies in tangible form) will have deductions made from the profits of the film.

An important change concerns the proposal for the

creation of the Film Art Institute, that would be a State legal person, supervised by the Minister of Culture. The Institute's competences would be quite considerable and broad: firstly, to inspire and contribute to the development of all kinds of Polish film creativity and to the preparation of film projects, production, distribution and making available of film to the public; secondly, to support the activities aiming at popularisation of both Polish and world (especially European) film art; thirdly, to support the artistic development of young filmmakers; fourthly, to promote Polish film art; and, finally, to create conditions for the development of Polish film production. The Institute is supposed to co-operate with administrative bodies. Its revenues consist of (among others): grants from the State budget, revenues from the exploitation of films whose economic rights belong to the Institute, revenues from the Institute's property and its commercial activity and the aforementioned quotas (percentages from revenues) from enterprises operating theatres and enterprises selling film copies. The revenues should be used for the realisation of the tasks described in the bill.

The bill recognises that the collection, protection and popularisation of national heritage in the field of cinematography belongs to the – already existing – National Film Archives *Filmoteka Narodowa*, whose duties are also specified in the bill. ■

**Małgorzata Pęk**  
Dept. of European  
Integration and  
International Relations  
National Broadcasting  
Council of Poland  
Warsaw

● Draft Act on Cinematography, paper No. 2055, available at:  
<http://merlin.obs.coe.int/redirect.php?id=8629>

PL

## PT – New Law Proposal for Audiovisual and Cinematographic Arts

On 4 February, the Portuguese government presented its proposed law on the regime and principles of action for the development and protection of the arts and cinematographic and audiovisual activities, thus stating the intention to replace the legal framework set up by Decree-Law no. 350/93 of 7 October 1993.

The proposed law aims to (article 4):

- promote the production, distribution, exhibition, diffusion and editing of cinematographic and audiovisual works;
- guarantee the copyrights of authors, artists, interpreters and performers of cinematographic and audiovisual works;
- promote international co-production, through the establishment of bilateral agreements and international conventions;
- increase production, distribution and exhibition cooperation with Portuguese-speaking countries;
- develop the distribution and exhibition markets

**Luís António Santos**  
Departamento  
de Ciências  
da Comunicação  
Instituto de Ciências  
Sociais  
Universidade do Minho

● *Lei das Artes Cinematográficas e do Audiovisual (Anteprojecto 1ª revisão) (Draft law on Audiovisual and Cinematographic Arts)*, 3 June 2003, available at: <http://merlin.obs.coe.int/redirect.php?id=8952>

● *Comunicado do Conselho de Ministros de 4 de Fevereiro de 2004 (Council of Ministers Official Communiqué)*, 4 February 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8953>

PT

## RO – Public Information Guidelines Supplemented

Decision No. 274 of the *Consiliului Național al Audiovizualului* (National Audiovisual Council, the supervisory body for electronic media in Romania – CNA) of 25 September 2003 on correct public information (see IRIS 2003-10: 15) was amended and completed at the end of 2003. CNA Decision No. 377 states that certain occupational groups may no longer make or present informative audiovisual programmes in the electronic media. The newly added para. 3 of Article 1 of the decision lists the following categories:

- a.) MPs;
- b.) representatives of national and local public administration;

**Mariana Stoican**  
Radio Romania  
International  
Bucharest

● *Decizia nr. 377 Consiliului Național al Audiovizualului pentru modificarea și completarea Deciziei nr. 274 din 25 septembrie 2003 privind asigurarea informării corecte a opiniei publice, Publicată în Monitorul Oficial nr. 7 din 7 ianuarie 2004 (CNA Decision No. 377 of 11 December 2003 amending and completing Decision No. 274 of 25 September 2003 on correct public information)*, OJ No.7 of 7 January 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=8972>

RO

## RO – Controversy over Election Advertising Rules

This summer, local elections will be held in Romania, with parliamentary and presidential elections scheduled for the end of the year. Several bills relating to these elections are currently being debated in the Romanian

- through the creation of fiscal measures and the signing of bilateral and multilateral reciprocity agreements;
- promote the participation of the private sector in the development of the cinematographic and audiovisual industries;
- promote both national and international cinematographic and audiovisual production;
- ensure free circulation of cinematographic and audiovisual works;
- promote the conservation, valorisation and permanent cultural accessibility of the Portuguese cinematographic and audiovisual heritage;
- promote independent regulation and the application of competition principles to the cinematographic and audiovisual activities;
- promote the participation of cinematographic and audiovisual sectors' representative entities in the definition of policies for the area;
- develop teaching and continuous formation activities in the cinematographic and audiovisual sectors;
- ensure equal access for all citizens to all forms of cinematographic and audiovisual works.

The most significant change contained in this proposed law is the creation of a new capital investment fund for the development of cinematographic arts and the audiovisual sectors. This fund is to manage resources resulting from contributions of film distributors, restricted TV channels operators, and other non-specified entities. Film distributors are to invest no less than 2% of their distribution income (article 31), and operators and distributors of restricted TV channels are to contribute no less than 5% of their net income, including revenues from all distribution platforms, like cable, satellite, terrestrial digital, wireless, or any others that might exist (article 27).

The proposed law is now to be considered by Parliament, and the Culture Minister, Pedro Roseta, has indicated that he expects it to be approved before the end of 2004. ■

- c.) representatives of the presidency;
- d.) political party officials;
- e.) people who, either independently or on behalf of a political party, have publicly announced their intention to stand in local, parliamentary or presidential elections. In accordance with Art. 91 of Audiovisual Act No. 504/2002, any breach of these rules will be punished first by a public reprimand and, for subsequent offences, a fine of between ROL 25 million and ROL 250 million (EUR 1 is worth approximately ROL 41,000).

One Romanian TV presenter affected by this decision is the Chairman of the Senate Committee for Culture and Media, who produces a talk show on a private TV channel. The person concerned believes this decision infringes his right to carry out his occupation freely and has appealed to the *Curtea de Apel Bucuresti* (Bucharest Appeal Court) to quash the decision. He has also claimed the symbolic sum of ROL 2 in moral damages ("*Daune morale*"). ■

Parliament, including one stipulating how much advertising time political parties should be allocated in the electronic media during the campaign. In this regard the proposals of the parliamentary committee responsible for preparing the bills are very different from those of the *Consiliului Național al Audiovizualului* (National Audiovi-

sual Council – CNA). The relevant bill (*Proiectul Legii pentru alegerea autorităților publice locale*) proposes that political advertising should be treated separately from commercial advertising. Political advertising spots should be broadcast on the basis of agreements which the political parties, alliances, independent candidates and representatives of national minority groups should conclude separately with the relevant broadcasters, including cable TV operators, with the same tariff applying to each time unit.

In a communiqué published on 17 February 2004 in response to the publication of the bill, the parliamentary proposal was heavily criticised by CNA members. The CNA believes that access for political party representatives to the electronic media in the manner set out in Art. 60.4 of the bill represents pure political advertising and therefore breaches Romanian audiovisual legislation as well as Art. 18 of Directive 97/36/EC amending Directive 89/552/EEC (“Television Without Frontiers”). The parliamentary committee’s proposal does not apply the same maximum duration for election advertising as that applicable to commercial advertising. The CNA argues

**Mariana Stoican**  
Radio Romania  
International  
Bucharest

● **Comunicatul privind proiectul Legii pentru alegerea autorităților locale (CNA press release of 17 February 2004), available at:**  
<http://merlin.obs.coe.int/redirect.php?id=8973>

● **Parliament statement to the press, 18 February 2004**

RO

## US – Comcast Launches Hostile Tender Offer for Disney

On 11 February 2004, Comcast Corporation, the largest cable television operator in the United States, made a hostile tender offer for the Walt Disney Company – which the Disney board quickly rejected on 16 February 2004. Although Comcast valued the all-stock transaction at USD 60 billion, the actual amount is probably between USD 52 and USD 62 billion, since Comcast’s stock decreased and AT&T’s increased in price.

Until 2003, the deal would have been legally unthinkable for two reasons. First, in 2001 Comcast had acquired cable systems with nearly ten million subscribers from AT&T; under that contract, it could not make any deal that would dilute the value of the original AT&T shareholders’ interests. Second, until recently the Federal Communications Commission’s (FCC’s) rules prohibited ownership of broadcast stations and cable systems in the same geographic area – a provision which was struck down in *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002). Comcast’s offer thus was largely the result of dramatic changes in both private and public constraints.

All observers seem to agree that Comcast’s acquisition of Disney would not violate any specific rules, with the demise of the above broadcast-cable cross-ownership rules. Since the deal would create a huge vertically integrated company with interests ranging from production to broadcasting to cable, however, general antitrust and

**Michael Botein**  
Media Center  
New York Law School  
New York, USA

that advertising, irrespective of its form and content, should not exceed 12 minutes in any hour of broadcasting. In this context, the CNA also received a written opinion from the European Commission (DG Enlargement) on 16 February. It states that if political advertising is categorised as general advertising, it must also respect advertising regulations, particularly the provisions of Art. 18 of the “Television Without Frontiers” Directive.

The CNA members also object to other provisions of the bill. They are critical of the proposed regulation of transmission time for candidates, which states that political parties, alliances and independent candidates should be allocated airtime during peak periods every day during the campaign except Sundays by all private and public service broadcasters, including cable operators. Regional channels should allocate a maximum of 5 minutes to independent candidates during the whole election campaign, while candidates who reside in Bucharest or in districts that have no regional TV service should be allocated up to 5 minutes by the national public service channels. In connection with these proposed regulations, the CNA believes that private broadcasters should not be forced to participate in the election campaign by offering a certain amount of airtime. The same would have to apply even if, as a countermeasure, the cost of the allocated airtime were refunded. The public service and commercial broadcasters should also be entitled to determine independently the programme format, the content of individual programmes, transmission times, the number of guests and the topics of debate.

At a press conference called by the parliamentary committee on 18 February, the CNA communiqué was criticised. Amongst other things, the independence of private broadcasters was confirmed, since they remain responsible for concluding agreements on the transmission of election advertising. It is also a matter for Parliament alone to pass the relevant election provisions. ■

competition law questions might arise. In light of the unwillingness of the FCC, Federal Trade Commission (FTC), or Department of Justice to challenge equally large vertical mergers in the recent past – eg, the America On Line/Time-Warner deal – it seems unlikely that the US government would interfere with the proposed transaction. Indeed, the Trade Commission announced that it would not act only two days after Comcast’s announcement.

Several public interest groups said that they would file private antitrust cases against the acquisition. Their positions seem problematic at best, however, since the US courts have shown little inclination to interfere with vertical integration during the last two decades.

Comcast’s rationale for the tender offer is less than clear. To be sure, in early 2003 Comcast announced a long-range plan to control the cost of its programming inputs, through contract and/or ownership. Disney’s production capability would guarantee Comcast a steady supply of material for satellite-distributed cable channels. And the acquisition would bring with it two popular cable networks – ESPN and the Disney Channel. But this would give only limited programming control, because of the many other no-pay and pay cable channels available. Some commentators have speculated that the deal would create unspecified “synergies.” These are less than clear, however, and the same had been projected for the AOL/Time-Warner merger – never to emerge. ■



## IRIS Special: **Regulating Access to Digital Television**

**Technical Bottlenecks, Vertically Integrated Markets and New Forms of Media Concentration**

Including **Digital Television Glossary**

This *IRIS Special* deals with the digital technology used in television and provides answers to the following questions:

- How should modern technical devices used to control access to television be regulated?
- Can we, should we, and do we want to regulate them anyway?
- Are they already covered by current regulation?

This *IRIS Special* provides, in its first section, a brief overview of the topic. The second part contains a written version of the various articles, which either deal with the technical, legal and economic dimension of the topic or describe possible approaches to regulation. The third section contains further background information. The attached Glossary describes in detail the functioning of digital television and related services.

**Strasbourg 2004**

127 pages (IRIS Special) + 28 pages (Glossary)  
44 EUR

**For further information see:**

[http://www.obs.coe.int/oea\\_publ/iris\\_special/2004\\_01.html.en](http://www.obs.coe.int/oea_publ/iris_special/2004_01.html.en)

## PUBLICATIONS

European Audiovisual Observatory

### **Transfrontier Television in the European Union: Market Impact and selected Legal Aspects**

Available at:  
[http://www.obs.coe.int/online\\_publication/transfrontier\\_tv.pdf.en](http://www.obs.coe.int/online_publication/transfrontier_tv.pdf.en)

Harte-Bavendamm, H.,  
Henning-Bodewig, F.,  
*UWG Kommentar*  
DE, München  
2004, Verlag C.H. Beck  
ISBN 3 - 406 - 51662-9

Franceschini, L.,  
*Télévision et Droit de la Communication*  
France  
2003, Ellipses Marketing  
(collection infocom)  
ISBN 2729815740

Fromm-Runssenschuck, V.,  
Duggal, R.,  
*WTO und TRIPs*  
*Unmittelbare Auswirkung auf die Rechtspraxis*  
DE, Köln  
2004, Carl Heymanns Verlag  
ISBN 3- 452 - 25329 - 5

Davies, G.,  
*Copyright and the public interest*  
GB, London  
2002, Sweet and Maxwell

Phillips, J.,  
*Butterworths E-Commerce and IT Law Handbook*  
(2<sup>nd</sup> ed.)  
Editor: Butterworths

Merryman, J. H.,  
Elsen, A. E.,  
*Law, ethics and the visual arts*  
NL, Amsterdam  
2002, Kluwer International  
ISBN 904 119 8822

Arnold, R. QC.,  
*Performer's Rights*  
GB, London  
2004 (December), Sweet and Maxwell  
ISBN 0 421 87940 8

Michalos, Ch.,  
*The Law of Photography and Digital Images*  
GB, London  
2004 (May), Sweet and Maxwell  
ISBN 0 421 764 708

## AGENDA

### **IViR International Copyright Law Summer Course**

5 - 10 July 2004

Organiser:

Institute for Information Law (IViR)  
of the University of Amsterdam

Venue: Amsterdam

Information & Registration:

Tel.: +31 20 525 3406

Fax: +31 20 525 3033

E-mail: [ivir@ivir.nl](mailto:ivir@ivir.nl)

<http://www.ivir.nl>

### **IRIS on-line/Observatory Web-Site**

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

[http://obs.coe.int/iris\\_online/](http://obs.coe.int/iris_online/)

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

[Angela.donath@obs.coe.int](mailto:Angela.donath@obs.coe.int)

Information on other Observatory publications are available at

[http://www.obs.coe.int/oea\\_publ/](http://www.obs.coe.int/oea_publ/)

### **Document Delivery Service**

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

European Audiovisual Observatory, 76, allée de la Robertsau, 67000 Strasbourg, France

e-mail: [IRIS@obs.coe.int](mailto:IRIS@obs.coe.int) - fax: +33 (0)3 88 14 44 19

### **Subscription**

IRIS appears monthly. You may subscribe to it (10 issues for one calendar year, 5 IRIS plus issues, an annual index + a binder) at the annual rate of EUR 210 (approximately USD 213 and GBP 130).

#### **Subscription Service:**

Markus Booms - European Audiovisual Observatory

76, allée de la Robertsau, 67000 STRASBOURG, France

Tel.: +33 (0)3 88 14 44 00 - Fax: +33 (0)3 88 14 44 19

E-mail: [obs@obs.coe.int](mailto:obs@obs.coe.int) - <http://www.obs.coe.int/about/order.html>

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