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INTERNATIONAL

WIPO

Towards a Proposed Treaty on the Protection of Broadcasting Organizations

The consolidated text for a Treaty on the protection of broadcasting organizations, which was published on 29 February 2004, will serve as a basis for discussion during the upcoming Eleventh Session of the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization (WIPO), to be held in Geneva 7-9 June 2004. At the close of this Eleventh Session of the Standing Committee, a basic proposal for a new treaty will be prepared, taking into account the outcome of the June discussions and any decisions taken by the Standing Committee depending on its assessment of the progress of the work. At that time, the chairman of the Standing Committee will also examine the possibility of holding a diplomatic conference in the future with a view to adopting a Treaty on the Protection of Broadcasting Organizations.

This proposed international instrument would expand or give new rights to transmitters of information, even if they are not the creators of that information. Exclusive rights would be granted to broadcasting organizations for the transmission of information, whether or not such informa-

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• **Consolidated Text For A Treaty On The Protection Of Broadcasting Organizations, prepared by the Chairman of the Standing Committee on Copyright and Related Rights in cooperation with the Secretariat, WIPO Doc. SCCR/11/3, 29 February 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9041>**

EN-FR-ES-AR-RU-ZH

tion already qualifies for protection under the copyright or related rights regimes. Among the several points still at issue are the following: (i) the scope of protection, including the object of protection; (ii) the rights to be granted; (iii) the application of the principle of national treatment; and (iv) the relation of this Treaty with other treaties.

In its current form, the Treaty would cover not only broadcasting organizations, but also functionally similar entities, whether transmission occurs by wire or wireless means. It is still being debated whether the Treaty should cover "webcasting", which implies the modicum of interactivity in today's technological environment that is necessary to access the streaming of a program-carrying signal. Many Delegations have indicated, during previous Sessions, that further study would be needed and have suggested that the issue of webcasting would need to be dealt with in future discussions and not within the present framework. With regard to the application of the principle of national treatment, two alternatives are proposed: either to limit the obligation to accord national treatment to only those exclusive rights specifically granted in the new instrument; or to provide for a global national treatment extending the obligation to any rights that Contracting Parties "do now or may hereafter grant to their nationals", as well as to the rights specifically granted in the new instrument. The Treaty would grant exclusive rights of retransmission, communication to the public, fixation, reproduction, distribution, transmission following fixation, making available of fixed broadcasts. The precise scope of most of these rights will have to be further specified during the upcoming Session.

The term of protection to be granted to broadcasting organizations under this Treaty would last at least until the end of a period of 50 years computed from the end of the year in which the broadcasting took place. Finally, following the model of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, this Treaty would contain obligations concerning technological protection measures and rights-management information. ■

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.

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COUNCIL OF EUROPE

European Court of Human Rights: Case of Radio France v. France

The European Court of Human Rights, in its judgment of 30 March 2004, has agreed with the French authorities that *Radio France*, its editorial director and a journalist were to be held liable for the offence of public defamation of a civil servant. In a series of news flashes and bulletins in 1997, *Radio France* had mentioned an article published in the weekly magazine *Le Point*, which alleged that the deputy prefect of Pithiviers in 1942 and 1943, Mr. Michel Junot, had supervised the deportation of a thousand Jews. In 1998, the editorial director and the journalist were convicted for public defamation and were ordered to pay a fine and damages of approximately EUR 10,000. *Radio France* was also ordered to broadcast an announcement reporting the judgment every two hours for a period of 24 hours. The Paris Court of Appeal decided that Michel Junot's honour and dignity had been damaged, in particular because of the fact that in the news flashes it was said that the former deputy prefect had supervised the deportation of a thousand Jews (while in reality he had not taken the decision regarding the deportation); also, by comparing Mr. Junot's situation with that of Maurice Papon (who effectively has been convicted by the assizes Court for participation in

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● Judgment by the European Court of Human Rights (Second Section), case of *Radio France v. France*, Application no. 53984/00 of 30 March 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=32>

FR

EUROPEAN UNION

Council of the European Union: EU Joins Council of Europe Convention on Notification of Rules on Information Society Services

On 22 March 2004, the Irish Presidency of the European Union signed, on behalf of the EU, Council of Europe Convention 180 on Information and Legal Co-operation concerning Information Society Services. The Convention establishes an international system for the notification of draft national rules relating to online services, modelled on the existing EU notification system set up by Directive 98/34/EC, as amended by Directive 98/48/EC (see IRIS 1998-8: 3).

The definition of "Information Society Services" in the Convention mirrors the one contained in Directive 98/48/EC. These are defined as "any service, normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services". The Convention does not apply to radio broadcast-

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● "On-line services: EU ratifies Council of Europe Convention on notifying new national rules", Press Release of the European Commission IP/04/377 of 23 March 2004, available at:

<http://merlin.obs.coe.int/redirect.php?id=9058>

DE-EN-FR

● Council of Europe Convention No.180 on Information and Legal Co-operation concerning "Information Society Services", available at: <http://merlin.obs.coe.int/redirect.php?id=9061>

EN-FR

crimes against humanity) and by suggesting that he had not been a member of the Resistance (while there was substantial evidence that Junot had been active in the Resistance). The Strasbourg Court recognized that the disputed broadcasts had taken place against the background of a public debate and that they mainly had quoted, with correct reference to their source, from a serious weekly magazine. However, some allegations in the news flashes on *Radio France* had not been published in *Le Point* and in the news flashes some facts were presented in a much more affirmative tone than in the magazine article. In view of the seriousness of the facts inaccurately attributed to Mr. Michel Junot and because the news flashes had been broadcast many times with national coverage (the audiovisual media being powerful instruments to reach and influence a large part of the population), the European Court came to the conclusion that the French jurisdictional authorities had correctly applied Article 10 of the Convention, as the exercise of freedom of expression can be restricted or penalized taking into account the duties and responsibilities of media and journalists. According to the Strasbourg Court, the journalists and the director of *Radio France* should have exercised the utmost caution, as they must have been aware of the consequences for Mr. Junot of the bulletins that were broadcast to the whole of France. The conviction of *Radio France*, its director and a journalist was considered to be prescribed by law (Articles 29, 31 and 41 Press Act 1881), to pursue a legitimate goal (protection of the reputation and the rights of others, with reference also to the right of privacy as guaranteed by Article 8 of the Convention) and to be necessary in a democratic society. The Court unanimously came to the conclusion that there had been no violation of Article 10 of the Convention. The Court also agreed that it was possible to consider the responsibility of the director in the circumstances of the case and that the order to broadcast the convicting judgment was to be considered as prescribed by law. Therefore, the Court also was of the opinion that there had been no breach of Article 6 para. 2, or of Article 7 para. 1 of the European Convention on Human Rights. ■

ing services and television programme services covered by the European Convention on Transfrontier Television. Under the terms of the Convention, each Party must transmit the text (together with a short summary) of any draft national regulation specifically concerning Information Society services to the Secretary General of the Council of Europe, who will in turn transmit this to the other Parties. Each of the Parties may then submit comments on the notified draft, which the notifying party should endeavour to take into account when finalising the rule. In contrast to the EU notification system, the Convention does not provide for a standstill period following notification during which the legislative process is frozen (see IRIS 1998-8: 3), so Parties are encouraged to submit their comments as soon as possible. The Convention also provides for Parties to transmit to the Secretary General of the Council of Europe the final text of the regulations in question, so that these can be made available by means of a single database.

The general aim of the Convention is to increase the transparency and coherence of national rules for online services. This is particularly important as these services have by their very nature a cross-border dimension. The notification mechanism will enable all Parties to cooperate in the creation of new rules for this developing field.

Observer States, such as the USA, Canada, Japan and Mexico can also become Members of the Convention and can take part in the notification system. ■

European Commission: Microsoft Abuses Dominant Position

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In a decision of 24 March 2004, the European Commission has decided that Microsoft has abused its market power and therefore infringed Article 82 of the EC Treaty, by deliberately restricting interoperability between Windows PCs and non-Microsoft 'work group servers' (central network computers that provide services to office workers in their day-to-day work such as file and printer sharing, security and user identity management), and by tying its Windows Media Player (a software product that

● **European Commission, Commission Decision of 24 March 2004 relating to a proceeding under Article 82 of the EC Treaty, Case COMP/C-3/37.792 – Microsoft (Brussels, 21 April 2004), C(2004)900 final, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9067>

EN

● **"Commission concludes on Microsoft investigation, imposes conduct remedies and a fine", Press Release of the European Commission IP/04/382 of 24 March 2004, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9063>

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

European Commission: Guidelines for Future MEDIA 2007 Programme

The European Commission has recently adopted a Communication outlining how it intends to update and renew the current Community programmes in the fields of youth, culture, audiovisual and civic participation. All of these programmes are due to end in 2006 and concrete legislative proposals for the new generation of programmes will be put forward later this year. The aim of the present Communication is to give an indication of the content of these proposals and of the rationale behind them; one of the main objectives being the simplification and streamlining of the programmes. The Communication does not prejudice the final content of the legislative proposals and the Commission will continue to examine further ways of simplifying and improving the programmes.

As regards the current Community programmes in support of the audiovisual sector, MEDIA Plus and MEDIA Training (see IRIS 2003-6: 5), it is proposed that, after 2006, these be integrated into a single programme (MEDIA 2007). In preparation for this future programme,

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● **Making citizenship Work: fostering European culture and diversity through programmes for Youth, Culture, Audiovisual and Civic Participation, Communication from the Commission, COM (2004) 154 final, Brussels 9 March 2004, available at:**
<http://merlin.obs.coe.int/redirect.php?id=9045>

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

European Commission: Communication on the Management of Copyright and Related Rights in the Internal Market

On 16 April 2004, the European Commission adopted a Communication in which the current management of copyright and related rights in the Internal Market is analysed. The management of rights includes aspects such as licensing, assignment, remuneration etc. It can

is able to play back music and video content over the Internet) with its Windows operating system. According to the Commission, this behaviour has enabled Microsoft to acquire a dominant position in the market for work group server operating systems and risks eliminating competition altogether in that market. In addition, Microsoft's conduct has significantly weakened competition on the media player market.

For these abuses, the Commission has imposed a record-breaking fine of EUR 497.2 million on Microsoft, because of the gravity and duration of the still ongoing abuses. Furthermore, in order to restore the conditions of fair competition, Microsoft is required to disclose within 120 days the interface documentation that is necessary to achieve the development of non-Microsoft work group servers which are fully interoperable with Windows PCs and servers (NB: this does not refer to the Windows source code). To the extent that any of this interface information might be protected by intellectual property, Microsoft would be entitled to reasonable remuneration. Microsoft is also required to offer a version of the Windows operating system for PC without the Windows Media Player to PC manufacturers within 90 days, so that PC manufacturers can put together bundles of operating systems and media players which will reflect what consumers want, and not what Microsoft imposes. To ensure effective and timely compliance with this decision, the Commission will also appoint a Monitoring Trustee.

Microsoft has already announced it will appeal the decision before the Court of First Instance. ■

the Commission has carried out a wide public consultation, which has showed that further Community action is needed in particular to help develop the skills necessary for the creation of films and other audiovisual works with a European dimension and to improve the circulation of non-national works within the EU. MEDIA 2007 will address these problems and will continue (as do the current programmes) to direct its actions to the pre- and post- production phases, although these actions will change in light of technological and market developments. As the European audiovisual sector is mainly composed of SMEs (small and medium sized enterprises), the new programme will aim to create an environment adapted in particular to these players, including through new actions to facilitate access to financing for SMEs.

The Communication sets out the proposed lines of action of MEDIA 2007 in the areas of the acquisition of skills and competence by professionals, development of projects, distribution, promotion, and pilot projects. As regards the general operation of the programme, it is proposed that rules and procedures be made more user-friendly, as advocated in the public consultation.

Finally, the Communication lists the proposed targets of the future programme. These include, *inter alia*, increasing the market share in Europe of European films distributed outside their country of production from 11% (the current share) to 20% by 2013 and enabling 40 European academies to co-operate in order to improve skills and exchange know-how on a European level. ■

be carried out individually by the rightsholder, or collectively by a collecting society. Between 1995 and 2002 the Commission has consulted widely on this subject. The conclusions of these consultations form the basis of this Communication.

The Commission notes that the borders for managing and using copyright and related rights are increasingly being removed. This is due to the emerging digital environment in the Information Society, on the one hand,

and to the cross-border dimension in the licensing for analogue exploitation, on the other. In the Internal Market harmonisation of substantive copyright law has already been established, but the management of rights has been dealt with only marginally. In order for the Internal Market to function properly, a level playing field at Community level of rules and conditions on rights management should be ensured.

Throughout the consultation process, a recurrent theme has been the demand for Community-wide licensing for the exploitation of certain rights, which have an impact across borders. In the Communication, several options on how to proceed in this respect are assessed. In principle, the response to this demand should be market-driven. But focus should also be placed on creating more common ground on the conditions for collective management. Common rules on collective rights man-

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● Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the Management of Copyright and Related Rights in the Internal Market, COM (2004) 261 final, Brussels 16 April 2004, available at: <http://merlin.obs.coe.int/redirect.php?id=9055>

DE-EN-FR

NATIONAL

AT – Draft Amendment to Broadcasting Acts Tabled

On 20 April 2004, the media department of the *Bundeskanzleramt* (Federal Chancellery) tabled a comprehensive Bill amending three Broadcasting Acts. If passed, this would represent the biggest shake-up since the legal framework was reorganised in 2001.

For the first time, national private radio will be permitted. In recent years, in order to make radio broadcasting more profitable, shareholding restrictions have been relaxed and channel takeovers facilitated; now, it will be possible to exploit additional synergies by combining licences. This will only apply to existing licences. Private radio stations will be able to transfer their licences to a company. Pre-existing licences will automatically expire when a national licence is granted. Under the Federal Chancellery's proposal, national licence-holders will have to be joint-stock companies. Other conditions for these licences include a certain level of capital resources and coverage of an area in which at least 60% of the Austrian population lives.

In Austria, when there is more than one applicant for a radio or television broadcasting licence, the selection process takes into account the proposed programme type. Successful applicants are then obliged to broadcast that type of programme. In the past, several radio broadcasting licences have been withdrawn because the providers significantly changed the type of programme they were broadcasting. From now on, it will be possible at least two years after being granted a licence to significantly change the programme type, provided such a change is

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● Draft Federal Act amending the *Privatradiogesetz* (Private Radio Act), the *Privatfernsehgesetz* (Private Television Act) and *KommAustria-Gesetz* (KommAustria Act) and repealing the *Fernsehsignalgesetz* (Television Signals Act), available at: <http://merlin.obs.coe.int/redirect.php?id=9054>

DE

gement and on good governance of collecting societies could therefore support this market-led approach.

Digitatl Rights Management systems (DRMs) are an important tool for rights management in the new digital environment. These systems have generated high expectations. In principle, the development of DRMs should be based on their acceptance by all stakeholders, including consumers. This is a precondition for their emergence. The copyright policy of the legislature could also play an essential factor. Transparency must be guaranteed. A final element in the development of DRMs is Community-wide accessibility to such systems by rightsholders, users and consumers. A prerequisite to ensuring this, is that DRM systems must be interoperable.

In relation to individual rights management, the Commission comes to the conclusion that there is at present sufficient common ground in all Member States. For this reason there is no need, for the moment, to take any action at Community level.

With respect to collective rights management, however, significant differences exist in the legislation and practice of the Member States. Therefore, the Commission intends to propose a legislative instrument on certain aspects of collective management and good governance of collecting societies, such as the establishment and status of collecting societies, their relationship with (commercial) users and rightsholders and their external supervision. This echoes the European Parliament's resolution of 15 January 2004 on collective management societies (see IRIS 2004-3: 3). The Commission will launch a further consultation exercise on the content of such legislation. ■

not expected to seriously jeopardise competition, the profitability of existing radio broadcasters in the supply area or the variety of programmes for listeners. The same applies to private television broadcasters. In addition, a procedure will be introduced to determine the importance of a planned programme change. This will give legal certainty to private broadcasters who plan to change programme types.

The rules on the distribution of private TV channels to cable network operators will be tightened. The Federal Chancellery hopes that non-national terrestrial channels will also have to be distributed, provided a reasonable fee is paid. The same will apply to national cable channels.

In the past, it has often been considered unfortunate that the *Bundeskommunikationssenat* (Federal Communications Office), which oversees public service broadcasting, does not have the necessary facilities to monitor the *ORF* channels on a permanent basis. The *ORF* has therefore been monitored less effectively than private broadcasters, which are supervised by *KommAustria*, a body well equipped for this task. Under the planned amendment to the *KommAustria-Gesetz* (KommAustria Act), this organisation will be able to report infringements of advertising regulations to the Federal Communications Office. Unlike private broadcasters, the *ORF* will still be allowed to comment before proceedings are begun. If the Federal Communications Office concludes that the law may have been breached, it is obliged to instigate administrative court proceedings.

At the same time, the *Fernsehsignalgesetz* (Television Signals Act) will be repealed. It was originally brought in to transpose Directive 95/47/EC on the use of standards for the transmission of television signals. Certain identical provisions of Access Directive 2002/19/EC and Universal Service Directive 2002/22/EC will in future be transposed by a *KommAustria* decree. ■

DE – TV Programme Did Not Breach Legal Advice Act

In a decision of 15 January 2004, the *Bundesverfassungsgericht* (Federal Constitutional Court) quashed the rulings of the lower instance courts condemning private TV broadcaster *RTL* for giving unauthorised legal advice.

The case concerned a dispute involving *RTL plus Deutschland Fernsehen GmbH & Co. KG* and the transmission of several episodes of the programme “*Wie bitte*”. In one report, an argument between a haulage firm and the firm *M.* was discussed, concerning, *inter alia*, invoices for a telephone connection and the use of a so-called *Twincard*. *RTL*'s production company wrote to firm *M.*, asking for further information on the use of the *Twincard*. In another episode, the programme acted on behalf of a family that had been delivered a faulty chest of drawers. The character known in the programme as “*Mahnman*” visited the furniture company and explained the facts of the case through a megaphone outside its headquarters. A member of the firm's staff later promised that a replacement item in perfect condition would be delivered immediately.

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● Decision of the *Bundesverfassungsgericht* (Federal Constitutional Court), 15 January 2004, case no. 1 BvR 1807/98

DE

DE – Right to Install Satellite Dish Despite Cable Connection

According to a decision of the *Bundesgerichtshof* (Federal Supreme Court - *BGH*) of 22 January 2004, the owner of an apartment with a cable connection can install a satellite dish on his balcony if this is the only way of safeguarding his right to information.

In the *BGH*'s opinion, there was no legal justification for preventing foreign apartment owners from installing a satellite dish even if they already had a broadband cable connection. This applied to the legal provisions governing the use of separate and joint property. Neither could such a right be restricted by regulations permitting the installation of an outdoor dish only with the written consent of the apartment administrator or decision of the apartment owners' association. According to the *BGH*, even the decision taken by the majority of apartment owners in the present case to prohibit the installation of satellite dishes did not limit the rights of foreign apartment owners. Their right to information from generally accessible sources, guaranteed in Art. 5.1.1 of the *Grundgesetz* (Basic Law), took precedence over the interests of other apartment owners. In the *BGH*'s opinion, as

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● Decision of the *Bundesgerichtshof* (Federal Supreme Court - *BGH*), 22 January 2004, case no. VZB 51/03, available at: <http://merlin.obs.coe.int/redirect.php?id=8723>

DE

DE – First Decisions on EPGs

In a recently-published decision taken in January 2004 the responsible regulatory body, the *Hamburgische Anstalt für neue Medien* (Hamburg New Media Authority - *HAM*) ruled that the programme guide offered by the magazine *HÖRZU* was compatible with the requirements of media law.

The plaintiff in the original proceedings, a lawyer, claimed that these reports breached an undertaking made by *RTL* that it would not get involved in legal matters on behalf of third parties in the sense of the *Rechtsberatungsgesetz* (Legal Advice Act). He claimed DEM 40,000 (approx. EUR 20,000) from the broadcaster. The lower courts upheld the complaint.

RTL's complaint that these decisions infringed the Constitution was upheld. The protection offered by Art. 5.1.2 of the *Grundgesetz* (Basic Law) covered programmes such as the one in question. By the aforementioned undertaking, *RTL* had not relinquished any of its basic rights. There was no reason why it should not broadcast programmes unless it had got involved in legal matters on behalf of third parties in the sense of the *Rechtsberatungsgesetz*. Although on the one hand there was no reason to complain about a breach of the *Rechtsberatungsgesetz* at the general abstract level, on the other hand the courts had not taken sufficiently into consideration the scope of the freedom of broadcasting enshrined in Art. 5.1.2 of the Basic Law. It was true that a letter sent for the purposes of journalistic research and an invitation from the media to stop breaking the law represented involvement in legal matters on behalf of third parties in the sense of the *Rechtsberatungsgesetz*. However, under the terms of Art. 5.1.2 of the *Grundgesetz*, it was necessary to determine the main purpose of these actions. It was therefore necessary to clarify whether enforcement of the law was the main priority, particularly whether *RTL* had been directly involved in legal matters, or whether the primary emphasis was the journalistic coverage of a case for broadcast on television. However, the *Oberlandesgericht Köln* (Cologne Court of Appeal) had not adequately considered this question. Its ruling was therefore quashed and the case was referred back. ■

foreign nationals, they had a particular right to information. That right could not be fulfilled by the one Polish TV channel that was available via cable. Of course, the interests of other residents should be taken into account in the installation process. For example, if several residents wished to install satellite dishes, they could be required to share one.

In its ruling, the *BGH* expressly left open the question of whether the discrepancy between the selection of channels available via cable and satellite that resulted from technical progress was such that German apartment owners should also be entitled to install a satellite dish even if they already had a cable connection. Referring to the European Commission Communication on the Application of the General Principles of Free Movement of Goods and Services Concerning the Use of Satellite Dishes of 27 June 2001 (COM(2001) 351 final, see IRIS 2001-8: 5), the *BGH* ruled that, in view of technical developments that meant that several hundred radio and TV channels could be received via satellite in Europe, it was questionable whether the range of media available via cable was sufficient to protect diversity of opinion. This situation could mean “that, in a broader sense, even German apartment owners could no longer simply be referred to the cable connection provided”. Since in the present case the apartment owners were not German, the *BGH* did not (yet) need to answer this question. ■

Axel Springer AG was given official clearance under media law for its EPG in accordance with Art. 53.2 and 53.5 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - *RfStV*). The electronic programme guide submitted to *HAM* was deemed to be a navigator in the sense of Art. 53.2 *RfStV* and Art. 14 of the *Satzung über die Zugangsfreiheit zu digitalen Diensten* (rules on free access to digital services). It controlled the selection

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of television programmes and could be used as a generic user interface for all services available via the system. To be legally classified as a navigator, it was irrelevant whether the EPG was integrated as a basic navigator in set-top boxes or if it was installed by users as a multi-

● Press release of the *Hamburgische Anstalt für neue Medien (Hamburg New Media Authority)*, available at:
<http://merlin.obs.coe.int/redirect.php?id=9052>

DE

DE – Agreement Between Public Service Broadcasters and Germany's Largest Cable Provider

At the beginning of April, public service TV broadcasters *ARD* and *ZDF* reached an agreement with *Kabel Deutschland* concerning a series of conditions for the digital transmission of their programmes. *Kabel Deutschland* acquired most of the broadband cable networks previously owned by *Deutsche Telekom* and is currently preparing to take over additional networks.

There had been a dispute over the technical parameters for the cable transmission of the respective programme bundles, *ARD Digital* and *ZDF Vision*, which largely cover the whole range of digital public service TV channels. As well as the *ARD* channel itself, these include all regional and digital *ARD* channels, as well as *ZDF's* main channel and special interest digital channels. One important question was whether these channels should be broadcast totally unencrypted. It seemed that *ARD*

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● ARD press release, 2 April 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9051>

DE

FR – Parasitic Use of a Cinematographic Film in an Advertisement

Is the film *The Fifth Element* a victim of its own success? Apparently, as illustrated by a recent ruling by the Regional Court in Paris in a case the producer and director of a film brought against the cell phone company *SFR* and the advertising agency *Publicis* on the grounds of infringement of copyright and parasitic use. *Luc Besson* and the company *Gaumont* claimed that, in a major advertising campaign for a new service offered by the phone operator, the defendants had presented the actress who starred in the film, *Mila Jovovich*, in the appearance and costume of the main character in the film, placing her in situations and decors very close to those of the film, thereby appropriating the investments made for the film.

Regarding copyright infringement, the Court recalled that an advertising campaign may constitute the plagiarism of a cinematographic work if the campaign shows a number of similarities and points in common with the film, particularly as regards the subjects dealt with, the situations used, the development of the plot, the illustration of ideas, and the characteristic features of the characters and the production. In the case in question, *Luc Besson* claimed that the advertising campaign had made use of the physical appearance of the film's heroine, *Leeloo*, characterised by her red hair, her white-

Amélie Blocman
Légipresse

● Regional Court of Paris (3rd chamber, 3rd section), 30 March 2004, *Luc Besson and Gaumont S.A. v. SFR and Publicis Conseil*

FR

channel navigator to aid programme selection. The decisive factor was that the services offered by the navigator were available to all TV service providers under equal, reasonable and non-discriminatory conditions. When first turned on, it offered equal access to public service and private channels. It was also possible to switch programmes on directly and to change between the *HÖRZU* EPG and direct programme selection. It also supported other navigators and EPGs.

According to a press report, the *Gemeinsame Stelle Digitaler Zugang (Joint Digital Access Board - GSDZ)* of the *Landesmedienanstalten (Land media authorities)* has also examined the "receiver programming and programme listing procedure, Raps" and declared it compatible with media law. The corresponding decision was supposed to have been issued by the *Bremische Landesmedienanstalt (Bremen Land media authority)* at the end of last year. ■

and *ZDF* could insist this was the case in spite of opposition from the cable network operator. With the introduction of new business models, particularly in view of the conditions for the cable transmission of private free-to-air channels, it will therefore be difficult to stick to a system where all digital cable channels are encrypted. In any case, *Kabel Deutschland* has also agreed to support the MHP standard insofar as the public service channels can be received using any MHP-compatible cable decoder. This makes it possible to access the additional interactive services designed for this application standard. The agreement also states that the public service channels should be treated equally and without discrimination in the presentation of channels available.

The public service broadcasters also reached an agreement with the *Verband Privater Kabelnetzbetreiber e.V. (Association of private network operators - ANGA)* concerning technical conditions for the digital distribution of their programme bundles. The parties are in favour of a free market for terminal equipment, based on open, standardised technologies. This agreement forms part of an overall contract to be signed by the end of April 2004. ■

striped costume and her supernatural powers, and of the futuristic urban decor in which the action takes place. However, the Court found that the characteristic features of the character that could be protected could not be limited to just two elements of her physical appearance, and that those concerning the decor were related to a genre, the decor of a major metropolis, and could not be protected by copyright. There were therefore insufficient similarities for plagiarism to be proven.

However, the Court recalled that anyone, in return for payment and without justification, who draws substantial inspiration from another's economic asset without it being absolutely necessary, thereby gaining a competitive advantage and benefit from another's intellectual work and investment, commits a wrongful act of parasitic misconduct. The choice of the actress *Mila Jovovich* for the advertising campaign was not fortuitous since it made it possible, through the character she portrays in the advertising, to immediately attract the attention of a specific group of the population (young city dwellers between the ages of 24 and 35), because they would immediately identify her with the symbolic character from *The Fifth Element*, as she has its physical characteristics (clothing and hairstyle). This behaviour, which the Court held to be parasitic, had definitely caused the company *Gaumont* commercial prejudice for which, having regard to the scope of *SFR's* campaign (2,000 showings of the television advertisement, 180,000 posters, inserts in 150 newspapers, etc), it was awarded EUR 300,000 in damages. The Court also ordered the advertising campaign to be stopped. ■

Copyright

(UPDATED WITH AVAILABLE DATA AS OF 11 MAY 2004)

	WIPO Berne Convention for the protection of the literary and artistic works (1886)		WIPO Copyright Treaty (1996)			WIPO Performances and Phonograms Treaty (1996)			Declarations
	Date on which the State became Party to the Convention	Latest Act of the Convention to which the State is Party PA : Paris, BR : Bruxelles, RO : Rome, ST : Stockholm	Signatures	Ratifications and Accessions	Entry into force	Signatures	Ratifications and Accessions	Entry into force	
Member States of Council of Europe									
AD Andorra	02/06/2004	PA : 02/06/2004							
AL Albania	06/03/1994	PA : 06/03/1994					17/05/2001: A	20/05/2002	
AM Armenia	19/10/2000	PA : 19/10/2000							
AT Austria	01/10/1920	PA : 21/08/1982	30/12/1997			30/12/1997			
AZ Azerbaijan	04/06/1999	PA : 04/06/1999							
BA Bosnia-Herzegovina	01/03/1992	PA : 01/03/1992							
BE Belgium	05/12/1887	PA : 29/09/1999	19/02/1997			19/12/1997			
BG Bulgaria	05/12/1921	PA : 04/12/1974		29/03/2001: A	06/03/2002		29/03/2001: A	20/05/2002	
CH Switzerland	05/12/1887	PA : 25/09/1993	29/12/1997			29/12/1997			
CY Cyprus	24/02/1964	PA : 27/07/1983		04/06/2003: A	04/11/2003				
CZ Czech Republic	01/01/1993	PA : 01/01/1993		10/10/2001: A	06/03/2002		10/10/2001: A	20/05/2002	
DE Germany	05/12/1887	PA : 10/10/1974 - PA : 22/01/1974	20/12/1996			20/12/1996			
DK Denmark	01/07/1903	PA : 30/06/1979	28/10/1997			28/10/1997			
EE Estonia	26/10/1994	PA : 26/10/1994	29/12/1997			29/12/1997			
ES Spain	05/12/1887	PA : 10/10/1974 - PA : 19/02/1974	20/12/1996			20/12/1996			
FI Finland	01/04/1928	PA : 01/11/1986	09/05/1997			09/05/1997			
FR France	05/12/1887	PA : 10/10/1974 - PA : 15/12/1972	09/10/1997			09/10/1997			
GB United Kingdom	05/12/1887	PA : 02/01/1990	13/02/1997			13/02/1997			
GE Georgia	16/05/1995	PA : 16/05/1995		04/07/2001: A	06/03/2002		04/07/2001: A	20/05/2002	
GR Greece	09/11/1920	PA : 08/03/1976	13/01/1997			13/01/1997			
HR Croatia	08/10/1991	PA : 08/10/1991	15/12/1997	03/07/2000: R	06/03/2002	15/12/1997	03/07/2000: R	20/05/2002	
HU Hungary	14/02/1922	PA : 10/10/1974 - PA : 15/12/1972	29/01/1997	27/11/1998: R	06/03/2002	29/01/1996	27/11/1998: R	20/05/2002	
IE Ireland	05/10/1927	BR : 05/07/1959 - ST : 21/12/1970	19/12/1997			19/12/1997			
IS Iceland	07/09/1947	PA : 25/08/1999 - PA : 28/12/1984							
IT Italy	05/12/1887	PA : 14/11/1979	20/12/1996			20/12/1996			
LI Liechtenstein	30/07/1931	PA : 23/09/1999							
LT Lithuania	14/12/1994	PA : 14/12/1994		18/06/2001: A	06/03/2002		26/01/2001: A	20/05/2002	
LU Luxembourg	20/06/1888	PA : 20/04/1975	18/02/1997			18/02/1997			
LV Latvia	11/08/1995	PA : 11/08/1995		22/02/2000: A	06/03/2002		22/03/2000: A	20/05/2002	
MD Moldova	02/11/1995	PA : 02/11/1995	19/09/1997	13/03/1998: R	06/03/2002	19/09/1997	13/03/1998: R	20/05/2002	
MK TFRoMacedonia	08/09/1991	PA : 08/09/1991		04/11/2003: A	04/02/2004				
MT Malta	21/09/1964	RO : 21/09/1964 - PA : 12/12/1977							
NL Netherlands	01/11/1912	PA : 30/01/1986 - PA : 10/01/1975	02/12/1997			02/12/1997			
NO Norway	13/04/1896	PA : 11/10/1995 - PA : 13/06/1974							
PL Poland	28/01/1920	PA : 22/10/1994 - PA : 04/08/1990		23/12/2003: A	23/03/2004		21/07/2003: A	21/10/2003	
PT Portugal	29/03/1911	PA : 12/01/1979	31/12/1997			31/12/1997			
RO Romania	01/01/1927	PA : 09/09/1998	31/12/1997	01/02/2001: R	06/03/2002	31/12/1997	01/02/2001: R	20/05/2002	
RU Russian Federation	13/03/1995	PA : 13/03/1995							
SE Sweden	01/08/1904	PA : 10/10/1974 - PA : 20/09/1973	31/10/1997			31/10/1997			
SI Slovenia	25/06/1991	PA : 25/06/1991		19/11/1999: R	06/03/2002	12/12/1997	19/11/1999: R	20/05/2002	
SK Slovakia	01/01/1993	PA : 01/01/1993	29/12/1997	14/01/2000: R	06/03/2002	29/12/1997	14/01/2000: R	20/05/2002	
SM San Marino			12/12/1997						
TR Turkey	01/01/1952	PA : 01/01/1996							
UA Ukraine	25/10/1995	PA : 25/10/1995		29/11/2001: A	06/03/2002		29/11/2001: A	20/05/2002	
YU Serbia and Montenegro	27/04/1992	PA : 27/04/1992		13/03/2003: A	13/06/2003		13/03/2003: A	13/06/2003	
Non Member States									
BY Belarus	12/12/1997	PA : 12/12/1997	08/12/1997	15/07/1998: R	06/03/2002	08/12/1997	15/07/1998: R	20/05/2002	
IL Israel	24/03/1950	BR : 01/08/1951 - ST : 26/02/1970	25/03/1997			25/03/1997			
MA Morocco	16/06/1917	PA : 17/05/1987							
MC Monaco	30/05/1889	PA : 23/11/1974	14/01/1997			14/01/1997			
TN Tunisia	05/12/1887	PA : 16/08/1975							
VA Holy See	12/09/1935	PA : 24/04/1975							
EC			20/12/1996			20/12/1996	20/12/1996		
Other States¹⁾									
AR Argentina	10/06/1967	PA : 19/02/2000 - PA : 08/10/1980	18/09/1997	19/11/1999	06/03/2002	18/09/1997	19/11/1999: R	20/05/2002	
AU Australia	14/04/1928	PA : 01/03/1978							
BR Brazil	09/02/1922	PA : 20/04/1975							
CA Canada	10/04/1928	PA : 26/06/1998	22/12/1997			22/12/1997			
CN China	15/10/1992	PA : 15/10/1992							
DZ Algeria	19/04/1998	PA : 19/04/1998							
EG Egypt	07/06/1977	PA : 07/06/1977							
IN India	01/04/1928	PA : 06/05/1984 - PA : 10/01/1975							
JP Japan	15/07/1899	PA : 24/04/1975		06/06/2000: R	06/03/2002				
MX Mexico	11/06/1967	PA : 17/12/1974	18/12/1997	18/05/2000: R	06/03/2002	18/12/1997	17/11/1999: R	20/05/2002	X
NZ New-Zealand	24/04/1928	RO : 04/12/1947							
TH Thailand	17/07/1931	PA : 02/09/1995 - PA : 29/12/1980							
US USA	01/03/1989	PA : 01/03/1989	12/04/1997	14/09/1999: R	06/03/2002	12/04/1997	14/09/1999: R	20/05/2002	X
ZA South Africa	03/10/1928	BR : 01/08/1951 - PA : 24/03/1975	12/12/1997			12/12/1997			

1) Selection

Copyright and others

(UPDATED WITH AVAILABLE DATA AS OF 11 MAY 2004)

	UNESCO Universal Copyright Convention (Geneva, 1952)		WIPO-UNESCO-ILO Rome Convention ¹⁾ (26 October 1961)		WIPO-UNESCO-BIT Phonograms Convention, Geneva ²⁾ (29 October 1971)	WIPO-UNESCO Convention relating to the distribution of programme-carrying signals transmitted by satellite (21 May 1974)	WIPO Treaty on the international registration of audiovisual works (20 April 1989)		ESA/ASE Convention for the establishment of a European Space Agency (30 May 1975)
	Ratification, Accession, and Declaration 1952 Text	1971 Text	Ratification or Accession	Declarations	Ratification Accession / Acceptance Declaration	Date on which State became Party to the Convention	Signature	Ratification / Accession	Date of ratification
Member States of Council of Europe									
AD Andorra	22/01/1953 : R		25/02/2004 : A						
AL Albania		04/11/2003 : A	01/09/2000 : A						
AM Armenia			31/01/2003 : A			13/12/1993			
AT Austria	02/04/1957 : R	14/05/1982 : A	09/06/1973 : R	X	21/08/1982 : R	06/08/1982	20/04/1989	27/02/1991 : R	30/12/1986
AZ Azerbaijan	07/04/1997 : D			X	01/09/2001 : A	06/08/1982	20/04/1989	27/02/1991 : R	30/12/1986
BA Bosnia-Herzegovina	12/07/1993 : D	12/07/1993 : D				06/03/1992			
BE Belgium	31/05/1960 : R		02/10/1999 : A	X					03/10/1978
BG Bulgaria	07/03/1975 : A	07/03/1975 : A	31/08/1995 : A		06/09/1995 : A				
CH Switzerland	30/12/1955 : R	21/06/1993 : R	24/09/1993 : A	X	30/09/1993 : R	24/09/1993			19/11/1976
CY Cyprus	19/09/1990 : A	19/09/1990 : A			30/09/1993 : A				
CZ Czech Republic	26/03/1993 : D	26/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D			01/01/1993 : R	
DE Germany	03/06/1955 : R	18/10/1973 : R	21/10/1966 : R	X	18/05/1974 : R	25/08/1979			26/07/1977
DK Denmark	09/11/1961 : R	11/04/1979 : R	23/09/1965 : R	X	24/03/1977 : R				15/09/1977
EE Estonia			28/04/2000 : A		28/05/2000 : A				
ES Spain	27/10/1954 : R	10/04/1974 : R	14/11/1991 : R	X	24/08/1974 : R				07/02/1979
FI Finland	16/01/1963 : R	01/08/1986 : R	21/10/1983 : R	X	18/04/1973 : R				01/01/1995
FR France	14/10/1955 : R	11/09/1972 : R	03/07/1987 : R	X	18/04/1973 : R		20/04/1989	27/02/1991 : R	30/10/1980
GB United Kingdom	27/06/1957 : R	19/05/1972 : R	18/05/1964 : R	X	18/04/1973 : R				28/03/1978
GE Georgia									
GR Greece	24/05/1963 : A		06/01/1993 : A		09/02/1994 : A	22/10/1991	29/12/1989		
HR Croatia	06/07/1992 : D	06/07/1992 : D	20/04/2000 : A		20/04/2000 : A	08/10/1991			
HU Hungary	23/10/1970 : A	15/09/1972 : R	10/02/1995 : A		28/05/1975 : A		20/04/1989	07/08/1998 : A	*
IE Ireland	20/10/1958 : R		19/09/1979 : R	X					10/12/1980
IS Iceland	18/09/1956 : A		15/06/1994 : A	X					
IT Italy	24/10/1956 : R	25/10/1979 : R	08/04/1975 : R	X	24/03/1977 : R	07/07/1981			20/02/1978
LI Liechtenstein	22/10/1958 : A	11/08/1999 : R	12/10/1999 : A	X	12/10/1999 : R				
LT Lithuania			22/07/1999 : A		27/01/2000 : A				
LU Luxembourg	15/07/1955 : R		25/02/1976 : A	X	08/03/1976 : R				
LV Latvia			20/08/1999 : A	X	23/08/1997 : A				
MD Moldova	18/04/1997 : D		05/12/1995 : A	X	17/07/2000 : A				
MK TFRoMacedonia	30/04/1997 : D	30/04/1997 : D	02/03/1998 : A	X	02/03/1998 : A	17/11/1991			
MT Malta	19/08/1968 : A								
NL Netherlands	22/03/1967 : R	30/08/1985 : R	07/10/1993 : A	X	12/10/1993 : A				06/02/1979
NO Norway	23/10/1962 : R	07/05/1974 : R	10/07/1978 : A	X	01/08/1978 : R				30/12/1986
PL Poland	09/12/1976 : A	09/12/1976 : A	13/06/1997 : A	X			29/12/1989		
PT Portugal	25/09/1956 : R	30/04/1981 : A	17/07/2002 : A					14/11/2000	
RO Romania			22/10/1998 : A	X	01/10/1998 : A				
RU Russian Federation	27/02/1973 : A	09/12/1994 : A	26/05/2003 : A		13/03/1995 : A	20/01/1989			
SE Sweden	01/04/1961 : R	27/06/1973 : R	18/05/1964 : R	X	18/04/1973 : R				06/04/1976
SI Slovenia	05/11/1992 : D	05/11/1992 : D	09/10/1996 : A	X	15/10/1996 : A	25/06/1991			
SK Slovakia	31/03/1993 : D	31/03/1993 : D	01/01/1993 : D	X	01/01/1993 : D			01/01/1993 : R	
SM San Marino									
TR Turkey			08/04/2004 : A						
UA Ukraine	17/01/1994 : D		12/06/2002 : A		18/02/2000 : A				
YU Serbia and Montenegro		11/09/2001 : D	10/06/2003 : A		12/06/2003 : R	27/04/1992			
Non Member States									
BY Belarus	29/03/1994 : D		27/05/2003 : A						
IL Israël	06/04/1955 : R		30/12/2002 : A		01/05/1978 : R				
MA Morocco	08/02/1972 : A	28/10/1975 : A				30/06/1983			
MC Monaco	16/06/1955 : R	13/09/1974 : R	06/12/1985 : R	X	02/12/1974 : R				
TN Tunisia	19/03/1969 : A	10/03/1975 : R							
VA Holy See	05/07/1955 : R	06/02/1980 : R			18/07/1977 : R				
EC									
Other States³⁾									
AR Argentina	13/11/1957 : R		02/03/1992 : R		30/06/1973 : A		29/04/1992	29/07/1992 : A	
AU Australia	01/02/1969 : R	29/11/1977 : A	30/09/1992 : A	X	22/06/1974 : A	26/10/1990			
BR Brazil	13/10/1959 : R	11/09/1975 : R	29/09/1965 : R		28/11/1975 : R			26/06/1993 : R	
CA Canada	10/05/1962 : R		04/06/1998 : A	X			21/12/1989		*
CN China	30/07/1992 : A	30/07/1992 : A			30/04/1993 : A				
DZ Algeria	28/05/1973 : A	28/05/1973 : A							
EG Egypt					23/04/1978 : A		30/05/1989		
IN India	21/10/1957 : R	07/01/1988 : R			12/02/1975 : R		20/04/1989		
JP Japan	28/01/1956 : R	21/07/1977 : R	26/10/1989 : A	X	14/10/1978 : R				
MX Mexico	12/02/1957 : R	31/07/1975 : R	18/05/1964 : R		21/12/1973 : R	25/08/1979	20/04/1989	27/02/1991 : R	
NZ New Zealand	11/06/1964 : A				13/08/1976 : A				
TH Thailand									
US USA	06/12/1954 : R	18/09/1972 : R			10/03/1974 : R	07/03/1985	20/04/1989		
ZA South Africa									

* Cooperating states. – 1) International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations – 2) Convention for the Protection of Producers of Phonograms against Unauthorised Duplication of their Phonograms – 3) Selection

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 11 MAY 2004)

	European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access (24 January 2001)				European Convention on the Protection of the Audiovisual Heritage (8 November 2001)				Protocol to the Convention of the Audiovisual Heritage, on the protection of Television Production (8 November 2001)				Convention on Cybercrime (23 November 2001)				Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (28 January 2003)			
	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D
Member States of Council of Europe																				
AD Andorra																				
AL Albania													23/11/01	20/06/02	01/07/04				26/05/03	
AM Armenia													23/11/01						28/01/03	
AT Austria					05/06/02					05/06/02			23/11/01						30/01/03	
AZ Azerbaijan																				
BA Bosnia-Herzegovina																				
BE Belgium													23/11/01						28/01/03	
BG Bulgaria	21/11/02	17/07/03	01/11/03		08/11/01				08/11/01			23/11/01								
CH Switzerland	06/06/01											23/11/01							09/10/03	
CY Cyprus	25/01/02	27/11/02	01/07/03									23/11/01								
CZ Czech Rep.																				
DE Germany													23/11/01						28/01/03	
DK Denmark													22/04/03						11/02/04	
EE Estonia													23/11/01	12/05/03	01/07/04				28/01/03	
ES Spain																				
FI Finland													23/11/01						28/01/03	
FR France	24/01/01				14/03/02				14/03/02			23/11/01							28/01/03	
GB United Kingdom													23/11/01							
GE Georgia																				
GR Greece					08/11/01				08/11/01			23/11/01							28/01/03	
HR Croatia												23/11/01	17/10/02	01/07/04				26/03/03		
HU Hungary					29/10/03							23/11/01	04/12/03	01/07/04	RE/DE					
IE Ireland													28/02/02							
IS Iceland					08/11/01				08/11/01			30/11/01							09/10/03	
IT Italy												23/11/01								
LI Liechtenstein																				
LT Lithuania					04/11/02	26/05/03			04/11/02	26/05/03		23/06/03	18/03/04	01/07/04	RE/DE					
LU Luxembourg	09/04/01											28/01/03							28/01/03	
LV Latvia												05/05/04							05/05/04	
MD Moldova	27/06/01	27/03/03	01/07/03	DE								23/11/01							25/04/03	
MK FYRoMacedonia												23/11/01								
MT Malta												17/01/02							28/01/03	
NL Netherlands	14/05/02	23/01/04	01/05/04	TD								23/11/01							28/01/03	
NO Norway	24/01/01	26/08/02	01/07/03									23/11/01								
PL Poland												23/11/01							21/07/03	
PT Portugal					08/11/01				08/11/01			23/11/01							17/03/03	
RO Romania	24/01/01	26/08/02	01/07/03		30/05/02				30/05/02			23/11/01							09/10/03	
RU Russian Federation	07/11/02																			
SE Sweden												23/11/01							28/01/03	
SI Slovenia												24/07/02							26/02/04	
SK Slovakia					17/02/03				17/02/03											
SM San Marino																				
TR Turkey					04/02/04				04/02/04											
UA Ukraine												23/11/01								
YU Serbia and Montenegro																				
Non member States																				
BY Belarus																				
IL Israel																				
MA Morocco																				
MC Monaco					09/09/03	17/12/03														
TN Tunisia																				
VA Holy See																				
EC																				
Other States																				
CA Canada												23/11/01								
JP Japan												23/11/01								
US USA												23/11/01								
ZA South Africa												23/11/01								

A: Signature - Accession (AC) - Acceptance (AP), B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD)

Council of Europe

(UPDATED WITH AVAILABLE DATA AS OF 11 MAY 2004)

	European Convention on Transfrontier Television (5 May 1989)				Protocol amending the European Convention on Transfrontier Television (9 September 1998)		European Convention on cinematographic co-production (2 October 1992)				European Convention relating to questions on copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (11 May 1994)	
	A	B	C	D	B	C	A	B	C	D	A	B
Member States of Council of Europe												
AD Andorra												
AL Albania	02/07/99											
AM Armenia												
AT Austria	05/05/89	07/08/98	01/12/98	DE	01/10/00	01/03/02	09/02/94	02/09/94	01/01/95	DE		
AZ Azerbaijan								28/03/00	01/07/00	DE/TD		
BA Bosnia-Herzegovina	09/12/03											
BE Belgium							19/02/98				06/08/98	
BG Bulgaria	20/05/97	03/03/99	01/07/99	DE	15/03/00	01/03/02	08/09/03	27/04/04	01/08/04			
CH Switzerland	05/05/89	09/10/91	01/05/93	RE/DE	01/10/00	01/03/02	05/11/92	05/11/92	01/04/94	DE	11/05/94	
CY Cyprus	03/06/91	10/10/91	01/05/93	DE	24/02/00	01/03/02	19/05/99	29/11/00	01/03/01		10/02/95	21/12/98
CZ Czech Republic	07/05/99	17/11/03	01/03/04				24/02/97	24/02/97	01/06/97			
DE Germany	09/10/91	22/07/94	01/11/94	DE	01/10/00	01/03/02	07/05/93	24/03/95	01/07/95	DE	18/04/97	
DK Denmark							02/10/92	02/10/92	01/04/94	DE		
EE Estonia	09/02/99	24/01/00	01/05/00	DE	24/01/00	01/03/02	13/12/96	29/05/97	01/09/97	DE		
ES Spain	05/05/89	19/02/98	01/06/98	DE	01/10/00	01/03/02	02/09/94	07/10/96	01/02/97	DE	11/05/94	
FI Finland	26/11/92	18/08/94	01/12/94	RE/DE	01/10/00	01/03/02	09/05/95	09/05/95	01/09/95	DE		
FR France	12/02/91	21/10/94	01/02/95	DE	05/02/02	01/03/02	19/03/93	09/11/01	01/03/02	DE		
GB United Kingdom	05/05/89	09/10/91	01/05/93	DE/TD	01/10/00	01/03/02	05/11/92	09/12/93	01/04/94	DE	02/10/96	
GE Georgia	29/10/03						21/11/01	15/10/02	01/02/03			
GR Greece	12/03/90						17/11/95	24/06/02	01/10/02			
HR Croatia	07/05/99	12/12/01	01/04/02		12/12/01	01/04/02	02/10/01					
HU Hungary	29/01/90	02/09/96	01/01/97	RE/DE	01/10/00	01/03/02	24/10/96	24/10/96	01/02/97	DE		
IE Ireland							28/04/00	28/04/00	01/08/00	DE		
IS Iceland							30/05/97	30/05/97	01/09/97	DE		
IT Italy	16/11/89	12/02/92	01/05/93	DE	01/10/00	01/03/02	29/10/93	14/02/97	01/06/97	DE		
LI Liechtenstein	05/05/89	12/07/99	01/11/99	RE/DE	12/07/99	01/03/02						
LT Lithuania	20/02/96	27/09/00	01/01/01	DE	27/09/00	01/03/02	08/09/98	22/06/99	01/10/99	DE		
LU Luxembourg	05/05/89						02/10/92	21/06/96	01/10/96	DE	11/05/94	
LV Latvia	28/11/97	26/06/98	01/10/98	RE	01/10/00	01/03/02	27/09/93	27/09/93	01/04/94	DE		
MD Moldova	03/11/99	26/03/03	01/07/03	RE/DE								
MK TFY/RoMacedonia	30/05/01	18/11/03	01/03/04	RE			11/04/02	03/06/03	01/10/03			
MT Malta	26/11/91	21/01/93	01/05/93	DE	01/10/00	01/03/02	17/09/01	17/09/01	01/01/02			
NL Netherlands	05/05/89						04/07/94	24/03/95	01/07/95	DE/TD		
NO Norway	05/05/89	30/07/93	01/11/93	RE/DE	01/10/00	01/03/02					11/05/94	19/06/98
PL Poland	16/11/89	07/09/90	01/05/93	DE	01/10/00	01/03/02	25/05/99	30/12/02	01/04/03	DE		
PT Portugal	16/11/89	30/05/02	01/09/02	TD			22/07/94	13/12/96	01/04/97	RE/DE		
RO Romania	18/03/97						24/04/01	28/03/02	01/07/02			
RU Russian Federation							30/03/94	30/03/94	01/07/94	DE		
SE Sweden	05/05/89						10/06/93	10/06/93	01/04/94	DE		
SI Slovenia	18/07/96	29/07/99	01/11/99	RE/DE	29/07/99	01/03/02	17/02/03	28/11/03	01/03/04			
SK Slovakia	11/09/96	20/01/97	01/05/97	RE/DE	01/10/00	01/03/02	05/10/93	23/01/95	01/05/95	DE		
SM San Marino	05/05/89	31/01/90	01/05/93		01/10/00	01/03/02					11/05/94	
TR Turkey	07/09/92	21/01/94	01/05/94		01/10/00	01/03/02	10/01/97					
UA Ukraine	14/06/96											
YU Serbia and Montenegro												
Non Member States												
BY Belarus												
IL Israël												
MA Morocco												
MC Monaco												
TN Tunisia												
VA Holy See	17/09/92	07/01/93	01/05/93	DE	01/10/00	01/03/02	10/02/93					
EC											26/06/96	

A: Signature - Accession (AC) - Acceptance (AP). B: Ratification, C: Entry into force - Denunciation (d), D: Reservation (RE) - Declaration (DE) - Territorial Declaration (TD) - Objection (O)

FR – The Right to Sports News in Multicasting

In 1992, in accordance with the terms of a code of good conduct drawn up by the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) provisions were integrated into the Act of 16 July 1984 with a view to better reconciling the public's right to information and the television channels' exclusive holding of rights to broadcast sport events. Thus Article 18-2 of the amended Act provides that the vendor or acquirer of the right to exploit a sports event may not oppose the broadcasting by other audiovisual communication services of brief extracts taken free of charge from the images produced by the rights-holding service(s) and freely chosen by the non-rights-holding service broadcasting them. When broadcasting free of charge during news programmes in this way, there must at all times be sufficient identification of the audiovisual communication service that holds the rights for the event in question.

In practice, in the absence of implementing regulations for these provisions, the question arises of the extent of the notion of "brief extracts". This was the case in the dispute before the Court of Appeal in Paris between the continuous sports news channel L'Equipe TV, broadcast by cable and satellite, and the private terrestrially-broadcast general channel TF1. TF1 had bought for EUR 168 million exclusive rights to broadcast in France

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● Court of Appeal of Paris (4th chamber, section A), 28 January 2004, *L'Equipe TV v. TF1*

FR

FR – Definition of an Audiovisual Work still not Settled

Reality shows on television at least have the merit of raising the question of qualification as an "audiovisual work" under French law, and the relevant definition. This is decisive, as it determines which legal and financial systems apply to the work. However, the difficulty lies in the multiplicity of definitions, each with a separate area of application. Thus, in addition to Article L. 112-2(6) of the Intellectual Property Code, Article 4 of the Decree of 17 January 1990 lays down the general principles for the broadcasting of cinematographic and audiovisual works on television by giving a negative definition of what constitutes an audiovisual work (see IRIS 2002-1: 8). For its part, the Decree of 2 February 1995 on State financial support for the audiovisual programme industry makes provision for the allocation of financial support from the French national cinematographic centre (*Centre national de la cinématographie* – CNC) for companies involved in the production of audiovisual works belonging to one of the following genres: fiction, animation, "creative documentaries", and the presentation of live shows.

On 30 July last year, the Conseil d'Etat upheld the decision of the CSA (*Conseil supérieur de l'audiovisuel* – audiovisual regulatory body) qualifying the Popstars reality show on television as an "audiovisual work" within the meaning of Article 4 of the Decree of

64 matches in the football World Cup series. L'Equipe TV had broadcast numerous extracts, the total duration of which exceeded one-and-a-half minutes per day of the competition and thirty seconds per match, and the source of the images was not indicated. More specifically, the Court was being called upon to consider the matter of adapting the notion of "brief extracts" to the context of multicasting.

The Court recalled initially that the CSA's code of good conduct and parliamentary work indicated that one-and-a-half minutes was commonly accepted as the exception to exclusivity. This amount of time applied to each day of the competition, and each match extract should be limited to thirty seconds. However, while this double limitation was appropriate for general channels with a limited number of news programmes each day, the Court felt it was not appropriate to the way the continuous news channels operated as, in view of the frequency of broadcasting news programmes, this resulted in the de facto multicasting of the extracts. For multicasted channels, which included L'Equipe TV, the Court felt that information rights would be protected by limiting the broadcast of a "brief extract" as it had already been defined to one showing every four hours per period of twenty-four hours.

The Court also felt that by broadcasting more than two hours of exclusive TF1 images without the least indication of their origin the sports channel had acted wrongfully and its liability was incurred. The same also applied to the circulation of leaflets referring to full coverage of the World Cup to promote the sale of advertising space. L'Equipe TV was therefore ordered to pay TF1, in compensation for the prejudice suffered, the sums of EUR 400,000 for the multicasts, EUR 50,000 for the lack of acknowledgement of source, and EUR 30,000 for the commercial advertising.

The anticipated forthcoming adoption of the decree containing the list of events of major importance does not affect this dispute, as TF1 is not a restricted-access channel. As a result, there is nothing to prevent the opening match, the semi-finals and the final of the World Cup being shown to the entire population of France. ■

17 January 1990 (see IRIS 2003-8: 9). On 11 March, the administrative tribunal set the cat among the pigeons by cancelling the decision of the CNC's director who had qualified the broadcast as a "documentary audiovisual work" within the meaning of the 1995 Decree, thereby entitling its production company to a supplementary investment grant of EUR 126 532.68.

The Tribunal held that the Popstars serial related and portrayed the full story of a pop music group created by a record company, from its constitution to the cutting of a record and presentation of the final concert, filming all the intermediate stages, including rehearsals, auditions, selection and the reactions of all the participants. Thus the content of the broadcast was not pre-existing but was created for the needs of the production and the broadcast. The disputed broadcast therefore did not constitute a documentary work and could not be considered as belonging to the "creative documentary" genre within the meaning of the provisions of Article 1 of the amended Decree of 2 February 1995.

The Ministry of Culture has announced that it will not appeal, and this ruling merely confirms the need to reform the definition of what constitutes an audiovisual work, which the CSA has been calling for since the end of 2001 (see IRIS 2002-1: 8).

Recently, the French media development directorate (*Direction du développement des médias* – DDM) and the CNC submitted to the CSA four areas for reflection, some

Amélie Blocman | of them attempting to narrow the gap between the
Légipresse definitions. The first suggestion involves the introduc-

● Administrative tribunal of Paris (7th section, 2nd chamber), 11 March 2004, Société des auteurs et compositeurs dramatiques (French society of dramatic authors and composers)

FR

GB – Definitions of “Regional Production” and “Regional Programme” Published

Both the U.K. Communications Act (2003) (see IRIS 2003-8: 10) and the BBC’s Agreement contain obligations on public service broadcasters in respect of regional production and regional programmes. The Act (and the BBC’s Agreement) requires that a suitable number and range of such programmes be produced in a suitable range of such centres. The obligation is to be realised by ensuring that a certain proportion of hours transmitted “comprises first-run programmes that meet the definition”. The Office of Communications (Ofcom) is reviewing the requisite proportions during 2004.

Such statutory obligations are to be included in licence

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● Regional production and regional programme definitions, available at:
<http://merlin.obs.coe.int/redirect.php?id=9044>

GB – Regulator Issues Report on Progress to Digital Switchover

The UK’s communications regulator, Ofcom, has issued a report commissioned by the Government on digital switchover. It notes that there has been considerable progress in take-up of digital equipment; 50.2% of households now have it, and the report claims that “the UK is recognised as the global leader in digital TV adoption.” In 1999 the Government set a target for switchover for the period 2006-2010, subject to universal availability of the main channels in digital form and 95% of households having digital equipment by that date (see IRIS 1999-9: 15 and IRIS 2003-7: 9). Ofcom considers that without further action this target is unlikely to be met, estimating that only 78% of households will have digital equipment by 2010. A particular problem is that only about three-quarters of households will be able to receive digital TV through their aerials until the signal’s power is boosted at switchover.

The regulator now recommends that there should now be a move from planning switchover to its implementation. The Government should set a firm timetable for a

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● Ofcom, “Driving Digital Switchover” April 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9040>

HU – Election of Broadcasting Commission Ends Funding Blockade

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On 29 March 2004, the Hungarian parliament elected a successor to the President of the Hungarian *Országos Rádió és Televízió Testület* (Television and Radio Commis-

● ORTT report on election of the ORTT President, available at:
<http://merlin.obs.coe.int/redirect.php?id=9053>

HU

tion of sub-quotas for investment in works that meet one of the two definitions. The second proposes refusing the qualification of audiovisual work if the work comprises elements that belong to an excluded genre. The third involves the non-promotion of sections filmed in a studio within audiovisual works mainly filmed out of the studio. Lastly, the final suggestion involves weighting the amount allocated to works according to criteria linked to their level of elaboration. The CSA took a preliminary look at each of these four areas of reflection at its plenary assembly on 30 March. ■

conditions. Ofcom initiated a consultation in 2003 regarding the definitions of these two terms, which will apply from January 2005.

In effect, the obligations require ITV, Channel 4, Five, BBC1, BBC2 and BBC digital channels together “to provide an agreed amount and range of programmes made outside the M25.” The “M25” is the designation of the ring road around London.

A “regional production” has to meet at least two of the following three criteria: the company must have a “substantive business and production based outside the M25”; “at least 70% of the production budget must be spent outside the M25”; and “at least 50% of the production staff should be working outside the M25”.

A “regional programme” will be defined in almost identical terms, simply replacing “in the region” for “outside the M25”. ■

rolling programme of regional switchover over about four years, ending in 2010. Only one or two analogue channels should be switched off first so that the digital signal could be boosted without screens going blank immediately. The regulatory framework should be used to create incentives for broadcasters to promote switchover, including new licence conditions and the possible use of spectrum pricing. The BBC should be given new obligations as part of its Charter review. Other regulatory action, using must-carry obligations under the Communications Act 2003, may be necessary to ensure that public service broadcasters are available free-to-view on digital satellite.

A mass national advertising campaign should promote switchover, and unconverted equipment should be subject to a labelling scheme to warn that it will not function after a set date. A body, termed “SwitchCo”, independent of Government and broadcasters, should be established and well resourced with responsibility for implementing switchover by the set date. At a later date, the Government should consider limited financial assistance for particular groups of consumers to support conversion of equipment. In international negotiations, the UK will seek to protect flexible UK use of the spectrum released by switchover. ■

sion – ORTT), who had resigned in December 2003, as well as other members.

Following the election, the funding due to public service broadcasting can now be released. Since the ORTT’s responsibilities had only been assumed on an interim basis, the payments could not be made until the Commission was elected. The outstanding payments due amounted to approx. HUF 1.6 billion (approx. EUR 6.7 million calculated on 20 April 2004). ■

LV – New Law on Electronic Communications Passed

Lelda Ozola
MEDIA Desk Latvia
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On 15 April 2004 the Cabinet of Ministers passed a new Law on Electronic Communications in Latvia. This law will replace the existing Law on Telecommunications.

The former Law on Telecommunications was adopted on 1 November 2001, and it regulated the telecommuni-

● Press release of the Ministry of Culture, available at:
<http://merlin.obs.coe.int/redirect.php?id=9049>

NL

LV – Introduction of new VAT on Cinema Exhibition in Latvia

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On 1 May 2004, changes in VAT rates in Latvia came into force, harmonizing them with regulations of the European Union.

The price of cinema tickets will be affected. An 18% VAT on film distribution and a 5% VAT on cinema tickets

cation services in a competitive environment. Under the new Law Latvia harmonizes its legislation with communications legislation on a European level adopted in 2002.

The Law regulates the competences of the public electronic communications institutions, private electronic communications network owners and the users of electronic communications services, as well as the competences of the state institutions connected with the management of the electronic communications branch, maintenance of electronic communications network, as well as allotment, use and management of the limited resources – radio frequencies, internet domains and digitalization. The new Law also refers to the electronic network necessary for the distribution of radio and television programs. However, the content of radio and television programs is regulated by the Law on Radio and Television. The new Law does not refer to the provision of information society services, the content of the information transmitted on the electronic network, or to the content of information received with the help of electronic network services. ■

have been introduced. Exceptionally, for screenings of films of an erotic or pornographic character the standard rate – 18% of VAT – is applicable on the sale of tickets. Small distributors, dealing mainly with European films, have criticised the move, as it is expected that the VAT on cinema tickets will actually have the effect of increasing the price of tickets. ■

NL – Self-Promotion Qualifies as Advertising

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The Dutch television programme “*Breekijzer*” was fined by the *Commissariat voor de Media* (the Dutch Media Authority - *CvdM*) for self-promotion. The broadcaster of the programme, SBS6, appealed, but the Court rejected the appeal on the merits of the case. In the final appeal, the *ABRvS* (the Dutch Supreme Court for Administrative Law) upheld the verdict of the *CvdM*.

According to Article 52j of the *Mediabesluit* (Dutch Media Regulation), commercial broadcasters may not show names, pictorial marks, services and activities, etc., of persons, companies or institutions in television programmes, when the intention is to stimulate the sale of products or services.

In this case, at the end of the programme, text appeared on the screen that promoted the *Breekijzer*

legal advice telephone service that charges the commercial rate of EUR 1.50 per minute. This telephone service is run by employees of *Jurofoon* (a legal service), who are paid out of the proceeds from the telephone service. Part of these proceeds goes to the producer of *Breekijzer*. SBS6 claims that article 52j is not applicable, as it does not concern self-promotion. The *ABRvS*, however, stated that it is a fact that self-promotion is a special sort of advertising and can thus be qualified as such (as is clear from the explanatory notes to the *Mediabesluit*). Furthermore, the announcement at the end of the programme was made by *Breekijzer* in order to entice the public to purchase its services. The conclusion of the *ABRvS* is that article 52j was violated.

When the Television without Frontiers Directive was implemented, it was specified that announcements made by broadcasters with regard to their own programmes were not considered as advertising. The *ABRvS* now states that this only relates to the provisions on the limitations on advertising transmission time. ■

NL – New Policy on Applications for Broadcasting Time for Religious and Other Spiritual Organisations

The *Commissariaat voor de Media* (the Dutch Media Authority) has recently published the *Beleidslijn zendtijd aanvragen van kerkgenootschappen en genootschappen op geestelijke grondslag* (Policy on applications for broadcasting time for religious and other spiritual organisations). This policy is based on Section 39f of the *Mediawet* (the Dutch Media Act), according to which the Media Authority may allocate national public broadcast-

ing time to religious and other spiritual organisations every five years. On the basis of this recently-published policy, the Media Authority shall evaluate the applications for the allocation of broadcasting time for the period 2005 –2010.

National public broadcasting time shall be allocated to representative organisations from the seven main religious and spiritual groups in the Netherlands (Buddhism, Catholicism, Hinduism, Humanism, Islam, Judaism, and Protestantism). From each of these groups, only one organisation will be entitled to broadcasting time. It is possible for different organisations to collaborate in one

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legal person. When there is more than one application from one group, the Media Authority shall allocate the broadcasting time to the organisation that represents or is open to representing the most sub-streams within the

● **Commissariaat voor de Media (Dutch Media Authority), *Beleidslijn zendtijdaanvragen van kerkgenootschappen en genootschappen op geestelijke grondslag (Policy on applications for broadcasting time for religious and other spiritual organisations)*, published in *Staatscourant (Official Gazette)* 14 April 2004 No. 71 p. 37, available at: <http://merlin.obs.coe.int/redirect.php?id=8992>**

NL

RU – New Structure of Regulatory Bodies

On 9 March 2004 President Vladimir Putin signed the Decree "On the system and structure of the federal executive bodies". In order to elaborate on the Decree's provisions the Government of the Russian Federation approved on 6 April 2004 the Ordinance regulating the authority of the new Ministry of Culture and Mass Communications and on 8 April 2004 the Ordinance regulating the authority of the new Federal Agency on Press and Mass Communications. The latter Ordinance enters into force on 21 April 2004.

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According to the Decree of 9 March 2004, the former Ministry of Press, Television and Radio Broadcasting and Mass Communication is now the Federal Agency on Press and Mass Communications, part of the new Ministry of

● **Decree of the President of the Russian Federation "O sisteme i strukture federalnykh organov ispolnitelnoi vlasti" ("On the system and structure of the federal executive bodies")**, published in *Rossiiskaya gazeta official daily* on 12 March 2004, N 50, available at: <http://merlin.obs.coe.int/redirect.php?id=9037>

● **Ordinance of the Government of the Russian Federation "Voprosy Ministerstva Kultury i massovykh kommunikatsii Rossiiskoi Federatsii" ("Questions of the Ministry of Culture and Mass Communications of the Russian Federation")**, published in *Rossiiskaya gazeta (official daily)* on 9 April 2004, N 74, available at: <http://merlin.obs.coe.int/redirect.php?id=9038>

● **Ordinance of the Government of the Russian Federation "Voprosy Federalnogo Agenstva po pečati i massovym kommunikatsiyam" ("Questions of the Federal Agency on Press and Mass Communications")**, published in *Rossiiskaya gazeta (official daily)* on 13 April 2004, N 76, available at: <http://merlin.obs.coe.int/redirect.php?id=9039>

RU

SI – Changes to Media Act Adopted

On 3 March 2004 the Slovenian government approved changes to the media act for first reading in the Parliament. It aims at the creation of conditions for media pluralism and the harmonisation of the sector with the *acquis communautaire*. The changes to the act were also necessary due to a new telecommunications bill.

The changes shall improve the system of approving applications for more than a 20-percent ownership stake in print media, in line with the goal of maintaining media pluralism.

The changes shall also enable the media to access public information and request access to non-public infor-

group. The applicant organisations are obliged to demonstrate their representativeness of the group.

Each year, the *Minister van Onderwijs, Cultuur en Wetenschap* (the Minister of Education, Culture and Science) shall establish how much national public broadcasting time is available for the seven organisations that qualify for the allocation. From the available time, 25% is allocated on an equal footing and 75% on a proportionate basis depending on the size of the membership of the group that the organisation represents. This system ensures that the allocation of broadcasting time is in proportion to the size of the different religious groups, and it also ensures that the smaller groups will be traceable and recognizable. The intention is to create diversity in the number of religious and spiritual programmes on public national radio and television, while still ensuring adequate representation of the main religious and spiritual groups in the Netherlands.

The organisations have to submit their applications before September 2004. The broadcasting time will be allocated before 1 January 2005. ■

Culture and Mass Communications. The competence of the old authority shall be allocated between the new Ministry and the Agency.

The Ordinance of 6 April 2004 stipulates that the Ministry of Culture and Mass Communications shall be the federal executive body that carries out governmental policy and provides legal regulation in the sphere of mass media and mass communications (Point 1). The Ministry shall co-ordinate and control the activities of the Federal Agency on Press and Mass Communications. Until television and radio broadcasting licensing procedures are amended by legislation, the Ministry is authorised to license television and radio broadcasting (including transmission of television or radio signals using satellite) and exhibition of audiovisual works in cinemas.

According to Point 1 of the Ordinance of 8 April 2004, the Federal Agency on Press and Mass Communications is "the federal executive body, performing the functions of providing state services, managing state property, and enforcing law in the sphere of press, mass media and mass communications". The Agency lists mass media and mass communications entities, television and radio broadcasters, and producers of audio and video in the state registers.

Until the Federal Registration Service is established the Agency shall be in charge of the registration of mass media entities. All territorial offices of the former Ministry will be subordinated to the Agency. ■

mation from public persons, on the basis of the constitutional right to freedom of information. Such information must be given a media outlet providing there will be no violation of privacy. The changes provide more specific definitions of two areas, namely information of public interest as defined by the act on access to information and information that journalists can demand from state bodies. These changes were introduced because there is criticism regarding some recent cases of misuse on the part of state bodies, which refuse to publish the required information. In such cases, journalists were not protected by law, and no sanction was envisaged for persons who refused to share information of public interest. The amended media act therefore includes specific deadlines

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by which a state body has to reply as to whether it will provide the required information, and legal protection in procedural regard for journalists. Journalists shall be able

● Press release of the Government of 3 March 2004, available at:
<http://merlin.obs.coe.int/redirect.php?id=9050>

EN

to file a complaint if they are denied access to public information.

As far as the EU legislation is concerned, the act would be more specific about the implementation of regulations related to programme quotas for local TV broadcasters, in line with the Television without Frontiers directive. The amendments would also improve some provisions on independent TV and radio producers.

In addition, the changes will harmonise the media act with the new telecommunications bill in those parts dealing with permits for radio and TV broadcasting, which are issued by the *Agencija za telekomunikacije, radiodifuzijo in pošto Republike Slovenije* (Agency for Telecommunications, Broadcasting and Post- ATRP). ■

PUBLICATIONS

Zeller, F.,
Öffentliches Medienrecht
Switzerland, Stämpfli Verlag AG Bern, 2004
ISBN 3-7272-1516-X
314pp.

Heinkelein, M.,
Der Schutz der Urheber von Fernsehshows und Fernsehshowformaten
DE, Baden Baden
2004, Nomos Verlagsgesellschaft
ISBN: 3-8329-0560-X
Preis: EUR 78

Leger, J.M.,
Le guide juridique du créatif
FR,
Editions d'Organisation
Prix : EUR 45

Le Tourneau, P.,
Contrats informatiques et électroniques
Editions Dalloz Référence
Prix : EUR 60

Maigret, E., (sous la direction de)
Communication et médias
La Documentation française
Prix : EUR 19

Senftleben, M.,
Copyright, Limitations and the Three-Step Test
Kluwer Law International (Information Law Series), The Hague, 2004
ISBN: 9041122672
Format: Hardcover
List Price: USD 107.00
Euro Price: EUR 95.00

Petri, G.,
The Composer's Right. A History of the Value of Music
SE, Stockholm
2002, Atlantis Verlag
ISBN: 91 - 7486-659-1

Lessig, L.,
The Future of Ideas – The Fate of the Commons in a Connected World
US: New York
2001, Random House, Inc.
ISBN: 0-375-50578-4
Price: EUR 27,10

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2003, Sweet & Maxwell
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Hays, Th.,
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GB, London
2003, Sweet & Maxwell
ISBN: 0421 84570 8
Price: GBP 135

Gervais, D.,
The TRIPs Agreement: Drafting History and Analysis
GB, London
2003, Sweet & Maxwell
ISBN: 0421 789 107

McCleen, D. and Schubert, K., (Eds)
Dear Images: Art Copyright and Culture
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