



LABnews November- December 1999

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1. Access to public sector information - electronic democracy

1.1. Germany – The Constitutions of the world on-line

The International Constitutional Law internet site of the University of Würzburg presents an English translation of the full constitutional texts of almost 130 countries from all over the world. Apart from the location of its country on the map, the site contains information on its political regime, its constitutional background together with a brief overview of the most important events of its modern history and related literature.

The site can be accessed at

<http://www.uni-wuerzburg.de/law/index.html>

1.2. Slovenia – Constitutional court launches website

The Constitutional Court of the Republic of Slovenia features general information on the Court, its composition, competence, rules of procedure, judicial statistics as well as an English translation of the country's constitutional texts and international agreements. The site also contains a selection of Slovenian case law covering the period 1992-1996 in both abstracts and full text, as published by the Venice Commission of the Council of Europe.

The site is accessible at

<http://www.sigov.si/us/eus-ds.html>

2. Competition

2.1. EU –Commission authorises acquisition of joint control by Telefonica and Portugal Telecom of Moroccan mobile telephony operator

On 20 December 1999, the European Commission authorised Telefonica InterContinental and Portugal Telecom International to acquire joint control, through the purchase of 69% of the shares, of Médi Télécom, the second licensed GSM operator of the Kingdom of Morocco. According to the Commission, this acquisition will not create or strengthen a dominant position, nor will it lead to anti-competitive co-operation between the parent companies.

Whereas Telefónica and Portugal Telecom respectively are the incumbent operators in Spain and Portugal, Médi Telecom services are to be restricted to the territory of Morocco, where European competition rules do not apply. However, even if the provision of mobile telephone services were to be considered with regard to all the countries which apply the GSM standard (including Morocco and the European Economic Area), the Commission held that the parties' current combined market shares will not increase as a result of the operation. Consequently, the consolidation does not create or strengthen a dominant position in the relevant product and geographic market.

Press release available at

http://europa.eu.int/rapid/cgi/rapcgi.ksh?p_action.gettxt=gt&doc=IP/99/1005/0/RAPID&lg=EN

2.2. Australia - Discussion paper on access pricing principles for fixed and mobile telephony networks

In December 1999, the Australian Competition and Consumer Commission, which arbitrates, inter alia, access disputes between telecommunications operators, released for public comment several papers looking at possible pricing approaches for the regulation of wholesale (access) services provided over mobile and the smaller (non-dominant) fixed line networks. These services are used by service providers to supply mobile-to-fixed and mobile-to-mobile calls, as well as long distance calls and local calls. A key issue raised by these papers is whether mobile networks and non-dominant telephone networks should be regulated in a similar way to Telstra's fixed network. The pricing of these wholesale services has a significant impact on the call charges paid by consumers. Therefore, the ACCC has sought expert financial advice and industry views on the principles that should be used to price these services.

The papers are available on the ACCC's website at <http://www.accc.gov.au>.

3. Computer crime

3.1. Norway – DVD security system hacked

In November 1999 a group of Norwegian programmers managed to crack the alleged hacker-proof DVD security system and make a perfect illegal copy of a DVD film. The programmers tried to reverse-engineer some of the existing Windows DVD players to figure out how to handle playback in Linux, where no playback software exists. They found out that one of the players did not have an encrypted decryption key, probably due to an omission by one of the decryption software's licensees.

A tiny utility called DeCSS is currently floating around on the Net enabling users to remove the encryption in a DVD movie, allowing it to be illegally copied. The software allows users to copy movies onto their hard drives, or onto other recordable media. The code is also being used to allow Linux based computers to utilise DVDs. This was the second time after MP3 in the music industry where PC accessibility has enabled content piracy. The film industry is expected to react against website operators allowing the code for the DeCSS program to be disseminated, as well as to introduce into the market a firmware upgrade.

More details available at <http://www.wired.com/news/technology/0,1282,32265,00.html?tw=wn19991104>

4. Consumer protection

4.1. USA – Internet shopping sites threaten consumer privacy

According to a December 1999 survey released by the Electronic Privacy Information Center (EPIC), online merchants do not adequately protect consumer privacy. The report "Surfer Beware III: Privacy Policies without Privacy Protection" examined

compliance with "Fair Information Practices," a set of principles designed to provide basic privacy protection. EPIC reviewed the privacy practices of the 100 most popular US shopping websites on the Internet. It found out that most of them did not give notice of what information is collected and how it is used.

According to the report, 18 of the top shopping sites did not display a privacy policy, 35 of the sites had profile-based advertisers operating on their pages, and 86 of the e-commerce operations used cookies. Privacy policies available at many websites were often confusing, incomplete and inconsistent. Not one of the companies adequately addressed all the elements of Fair Information Practices. EPIC concluded that the current practices of the online industry, based on self-regulation, provided little meaningful privacy protection for consumers. It therefore called for further development of technologies enhancing consumer privacy and anonymity when exploring the Internet.

The survey can be accessed on the EPIC website at <http://www.epic.org/reports/surfer-beware3.html>

5. Content of Internet and audio-visual and information services

5.1. Canada – Content access rules for pay television distribution amended

On 23 December 1999, the Canadian Radio-television and Telecommunications Commission (CRTC) issued a notice amending the Pay Television Regulations in order to level the playing field between pay-television networks and satellite networks as regards access rules to audio-visual content. The new rules prohibit pay-television networks from acquiring exclusive or otherwise preferential rights to pay-per-view programmes. Since the amendment will apply to exclusive or preferential rights already acquired, it provides for a limited transition period in which licensees will be allowed to broadcast programmes contracted for before May 1999 until 31 August 2000. Proposals for the prohibition to apply only to "unduly preferential" rights were rejected because the licensing conditions applying to the showing of pay-per-view programmes by direct-to-home satellite providers do not limit the prohibition to "unduly" preferential arrangements.

The text of the Public Notice is available on the CRTC website at http://www.crtc.gc.ca/ENG/BCASTING/NOTICE/1999/P99204_0.txt

5.2. USA – Federal Appeals Court rejects state law banning Internet speech

In November 1999, a three-judge panel of the Tenth Circuit Court of Appeals in Denver rejected as contrary to the First Amendment a New Mexico law banning Internet speech deemed "harmful to minors", saying that such laws censor valuable speech for adults. This law considered it a crime to disseminate online material that involves "nudity" or "sexual conduct" and had been challenged by the American Civil Liberties Union. The state argued that its law banned only online material considered "harmful to minors". However, the court pointed out that what may be patently offensive for minors may very well have social importance and not be patently offensive for adults. This material includes discussions of women's health and

interests, literary works and fine art, gay and lesbian issues, prison rapes, censorship and civil liberties issues. Moreover, the court found that the New Mexico law violates the Constitution's Commerce Clause, which bars states from regulating activity outside its borders. New Mexico can either accept this ruling or refer the case to the Supreme Court.

The Tenth Circuit decision can be accessed at

<http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=10th&navby=case&no=982199>.

6. Convergence of audio-visual, publishing and telecommunications

6.1. EU - Commission defines strategy for audio-visual policy in the digital age

On 14 December 1999, the European Commission adopted a Communication on principles for the Community's audiovisual policy in the digital age. This reviews the regulatory and support mechanisms already in place or to be implemented over the next five years at Community level to keep pace with rapid technological change. In the emerging digital economy, the applicable regulatory principles are proportionality, subsidiarity, the separation between transmission infrastructure and content, protection of minors and recognition of the special role of public service broadcasting. The existing legal instruments should apply to audio-visual content in conjunction with self-regulation and codes of conduct. "Hard law" regulations are also necessary in some fields such as copyright.

Audio-visual content regulation should be left to the Member States due to its national character. A balanced approach reconciling respect for the public service objectives of public broadcasters with the principles of fair competition should be introduced. Member States will have to define the public service remit and decide how public radio and television are to be financed, within the limits of Community law. As far as the external dimensions of the Community's audiovisual policy are concerned, the enlargement negotiations must ensure the adoption by applicant countries of the "Television without Frontiers" Directive and the directives on intellectual property.

Press release available at

http://europa.eu.int/rapid/cgi/rapcgi.ksh?p_action.gettxt=gt&doc=IP/99/981/0|RAPID&lg=EN

7. Data protection

7.1. Chile – Privacy legislation adopted

On 28 August 1999, Chile adopted privacy protective legislation. Law 19628 provides a set of detailed guidelines, principles and rules relating to the gathering, use, processing, storage and export of personal data. To be legal, all the above acts require the person's written consent. The law does not create a data protection authority. Its application is monitored by ordinary courts. Personal data registrars are bound to respect professional secrecy rules. Data subjects are entitled to access and correct the data relating to them and to claim compensation where loss or damage is suffered as a result of the use or disclosure of such data. Infringement of the legislation entails

administrative, civil and penal liability. Special provisions apply on financial, commercial, banking and medical data.

The new law can be downloaded at

http://www.modernizacion.cl/firm_doc_elect/leyes/leyes.htm

7.2. France – CNIL report on electronic mailing and data protection

Last October, the National Data Processing and Liberties Commission (CNIL) released a report on the data protection questions raised by electronic mailing. The report supports that unsolicited commercial communications raise questions which go beyond the field of electronic commerce and jeopardise national and European data protection rules. Furthermore, it determines the circumstances in which data may be collected, compares electronic mailing with traditional direct marketing methods and invites for a public dialogue all parties involved, so as to define the most appropriate legal framework for electronic commercial communications.

According to the study, the debate over “opt-in” or “opt-out” concerns only the hypothesis of e-mail addresses collected in internet public spaces without the exercise of the person’s right to object. Therefore, effective data protection relies on the adoption of codes of conduct in combination with policies of the systematic display on every site of a message indicating to visitors the purposes of data collection, also asking for their consent, prohibiting data use for direct marketing purposes and listing the name of the person responsible for the site. In addition, it is necessary to promote standardisation activities for the creation of protocols prohibiting automated data collection.

The report may be retrieved in the CNIL website at

<http://www.cnil.fr/>

7.3. EU - Privacy Commissioners find US Safe Harbor proposal inadequate

On 3 December 1999, the EU Working Party on the protection of individuals with regard to the processing of personal data expressed its opinion on the latest version of the "Safe Harbor" principles, designed to govern the processing of data transfers between the EU and US (available at <http://www.ita.doc.gov/td/ecom/menu.htm>). As regards the collection of personal data from individuals in the EU, the Working Party reminds that national provisions implementing the European Data Protection Directive will normally apply. It also recommends that the scope of those principles be clearly defined with regard to both the beneficiaries and the categories of data transfer; prior checks have to be effected by the Department of Justice in order to determine which organisations truly meet the qualification criteria (adherence of the privacy policy to the principles, jurisdiction of an FTC-type of body for deceptive practices) and which are the applicable exceptions. Since self-certification is not compulsory, any organisation could initially adhere to the principles and subsequently withdraw from the "Safe Harbor". Finally, mergers and take-overs may compromise the adhesion to those principles.

The full Opinion is available at

<http://europa.eu.int/comm/dg15/en/media/dataprot/wpdocs/index.htm>

8. Digital signatures

8.1. Chile – Pilot project on digital signatures launched

In September 1999, Chile announced a pilot project to introduce the use of digital signatures and electronically signed documents in the National Public Administration. According to the Decree No. 81 of 26 June 1999 (executive summary available at <http://www.modernizacion.cl/utic/firma/explica.htm>), a digital signature is defined as a numerical value, which is affixed to a data message and which, associated with the originator's private cryptographic key and the text of the message, allows one to determine whether the message was sent by the person claiming to be the originator, and whether it has been altered since it was signed. Digital signatures are assigned the same value as hand-written signatures as long as certain security standards are respected. The decree also contains basic technical specifications, obligations and recommendations regarding security, interoperability, encryption, key and data recovery in compliance with international standards. Those rules are to be followed by all bodies involved in this process and will determine the degree of liability of licensing and auditing institutions, certification authorities and certificate owners.

More details available at

<http://www.modernizacion.cl/utic/firma/index.htm>

8.2. Spain – Electronic signature legislation enacted

In September 1999, and after having enacted in the past various laws and circulars on the use of electronic signatures in the field of mortgages, taxation, financial services, budget law and registration of enterprises, Spain enacted new digital signature legislation. ‘Real Decreto Ley 14/1999’ was published in the Official Gazette no 224 of 18 September 1999. It defines the legal effects and acceptability of digital signatures, the licensing conditions and liability regime of certification authorities as well as the content, type and validity of digital certificates in on line transactions. In line with the European policy in this sector, both the accreditation schemes and the legal recognition of electronic signatures are based upon objective, transparent, non-discriminatory and proportional criteria. Administrative inspection of certification authorities combined with sanctions against infringers will guarantee security, integrity and data protection.

The decree is accessible at

<http://www.jurisweb.com/legislacion/index.htm>

8.3. USA – New bill recognises validity of electronic signatures in interstate commerce

In November 1999, a bill that would ensure the validity of electronic signatures in interstate commerce was referred to the Committee on Commerce, Science, and Transportation of the US Senate. The bill (H.R.1714) introduces a general rule of validity of electronic signatures with respect to any contract, agreement, or record

entered into or affecting interstate and foreign commerce. The contracting parties may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures.

Consumers have an obligation to notify the provider of the electronic records of any change in their electronic mail address or other location to which the electronic records may be provided. Nevertheless, the provisions of the bill shall not apply to contracts, agreements or records related to the creation and execution of wills, testamentary trusts, matters of family law such as adoption or divorce, or to official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings.

The text of the bill can be accessed at

<http://thomas.loc.gov/>

9. Electronic commerce

9.1. Australia – Study on economic impact of e-commerce

On 17 November 1999, the Australian Commonwealth Government released ‘E-commerce: Beyond 2000’, a summary report of a ground-breaking pilot study on the economic impact of electronic commerce in the country from now to 2016. The study concludes that e-commerce will bring substantial net benefits to all sectors of the Australian economy including tourism, entertainment, banking and communications. Industry sectors growing at the greatest rate will be those that make the most use of on line transactions. The real impact of e-commerce is its ability to reduce costs and prices and make doing business more efficient. It is expected to increase Australia's gross domestic product by 2.7 per cent by the year 2007. According to the study, some industry sectors such as printing, retailing and textiles may experience adjustments, but overall there should be net growth in employment opportunities. People will be better-off, their wages will rise and e-commerce will free up time for them. The information gained from this study should be used to promote discussion and further analysis of the structural changes arising from on-line trading.

The report is available online at

<http://www.noie.gov.au/beyond2000>

9.2. OECD – Guidelines for consumer protection in electronic marketplace

On 9 December 1999, the OECD's Council approved the ‘Guidelines for Consumer Protection in the Context of Electronic Commerce’. Although non-binding, the guidelines are set to play a major role in assisting governments, business and consumer representatives to develop and implement online consumer protection mechanisms without erecting barriers to trade.

Designed to ensure an adequate level of protection between on line and traditional shopping, they reflect the existing legal protection available to consumers in more traditional forms of commerce. Private sector initiatives including consumer participation have to be combined with co-operation among governments, businesses and consumers. Key success factors of the on-line business are fair conduct of on-line

traders, fair advertising and marketing practices, clear information about the goods or services, transparent transactions, secure payment mechanisms, timely and affordable dispute resolution and redress, privacy protection and, finally, consumer and business education.

The Guidelines can be accessed on the OECD website at

http://www.oecd.org/dsti/sti/it/consumer/prod/CPGuidelines_final.pdf

9.3. USA – FTC examines emerging anti-trust issues in electronic commerce

In a speech delivered on 12 November 1999 a representative of the Federal Trade Commission Anti-Trust Institute presented the emerging anti-trust issues raised in the electronic marketplace. Competitive concerns in electronic commerce are basically similar to those found in more traditional markets, tempered by a number of special characteristics such as control of internet access, horizontal boycotts, internet mergers, joint ventures, exclusive dealing and manufacturer restrictions on internet distribution.

These special characteristics warrant a sophisticated and subtle anti-trust enforcement policy designed to prevent collusive agreements and the abuse of market power, while allowing the full force of innovation to proceed at its market-determined pace. Although the growth of this market may be unprecedented, traditional anti-trust principles still apply. Among the questions at stake are consumer sovereignty and the role of intermediaries, the market dominance of firms with a large subscriber basis, ‘‘network effects’’ (in which the value of any product increases as others use the same product), the barriers to entry that may be created by ISPs acting as first-movers in high-end markets, or the anti-competitive conduct that may result from private standard - setting industrial groups.

More details available on the FTC website at

<http://www.ftc.gov/speeches/other/ecommerce.htm>

10. Intellectual property

10.1. WIPO – First case under cybersquatting procedure processed

On 2 December 1999, the first dispute under the new Uniform Dispute Resolution Policy applicable to top-level domains (.com, .net and .org) was filed with the World Intellectual Property Organization (WIPO) Arbitration and Mediation Center, a day after the new rules took effect. It refers to a domain name registered with Melbourne IT, one of the first five registrars accredited by ICANN to accept registrations, in addition to Network Solutions, Inc., in the .com, .net and .org top-level domains. The plaintiff alleges that the domain name in question was registered in bad faith by the domain name registrant in abuse of his trademark rights. Cases are expected to be decided by the panel of experts within 45 days.

The Uniform Dispute Resolution Policy was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 26 August, 1999. It essentially adopts the WIPO Internet Domain Name Process recommendations on the introduction of a uniform and mandatory administrative dispute-resolution system to address

"cybersquatting" cases. Using this system, panels of one or three experts, appointed by the WIPO Arbitration and Mediation Center, will apply streamlined, quick and cost-effective procedures to review multiple claims and eliminate cases of clear abuse of trademark holders' rights, leaving the more complex cases to the courts.

Press release available on the WIPO website at <http://www.wipo.org/eng/main.htm>

10.2. USA – Trademark Law Treaty Implementation Act simplifies trademark registration

On 30 October 1999, the Trademark Law Treaty Implementation Act (TLTIA) came into effect. The new legislation simplifies the procedures for registering and maintaining trademarks in the United States. Its most significant changes are the elimination of the requirement that applications and other documents be signed by an officer of the trademark owner, allowing for execution by attorneys on behalf of the owner or any other authorized agent. Other changes include the relaxation of the standards for the revival of an abandoned application, also the relaxation of requirements on colour drawings, and the addition of certain new grace periods for late or defective filings. In order to obtain a filing date, no more data are required by the Patent and Trademark Office (PTO) apart from the name of the applicant, a name and address for correspondence, a clear drawing of the mark, a list of goods or services and the filing fee for at least one class of goods or services. Electronically filed trademarks, duly signed by appropriate electronic signatures, will be considered to have been filed on the date of their effective transmission, regardless of whether that date is a Saturday, Sunday, or federal holiday.

The new legislation can be accessed on the PTO website at <http://www.uspto.gov/web/offices/tac/notices/guide399.htm>

11. Legal aspects of security and encryption

11.1. USA – Bureau of Export Administration implements encryption export control liberalization

In December 1999, the US Bureau of Export Administration (BXA) released a draft of the regulations implementing the planned encryption export control liberalization. This is in line with the new US approach to its encryption export control policy. This approach, announced last September, relies on three principles: a technical review of encryption products in advance of sale, a streamlined post-export reporting system, and a process that permits the government to review exports of strong encryption to foreign governments. The new regulations also implement changes for encryption items made by the Wassenaar Arrangement. The members of the 3 year-old arrangement agreed that export control enforcement must include a preventive programme, an investigatory process, penalties for violations, and international co-operation. The draft regulations essentially propose the end of encryption export controls and in some areas, for instance source code exports, go well beyond the announced liberalization. Nevertheless, restrictions on terrorist-supporting states will not be changed by the new rules.

More details on the BXA website at <http://207.96.11.93/whatsnew.htm>

12. Books, Websites and Events

12.1. Books

PRIVACY IN THE INFORMATION AGE, by Harry Henderson, Hardcover - 240 pages, November 1999, ISBN: 0816038708, Price: \$39.95.

This book provides a synthetic overview of legal issues related to privacy in cyberspace.

<http://www.amazon.com/exec/obidos/ASIN/0816038708/o/qid=948985630/sr=8-1/002-1722927-3505846>

TRENDS IN TELECOMMUNICATION REFORM 1999, CONVERGENCE AND REGULATION, International Telecommunication Union, price: CHF 75.

The second edition of this book focuses on the regulation of multimedia services by examining eight themes: institutional framework, ownership, liberalization, licensing, universal access, interconnection, price regulation and numbering.

<http://www7.itu.int/treg/publications/Trends-en.asp>

NOUVEAUX MEDIAS ET DROIT D'AUTEUR, Les Dossiers de l'Audiovisuel, No 88, Novembre- Décembre 1999, Sous la direction de : Jean-François Debarnot, Price : 67,56 FF (10,30 Euros).

This publication addresses, under a French law perspective, the copyright problems generated by new communication technologies.

<http://www.ina.fr/Publications/DA/88/index.fr.html>

GLOBAL TELECOMMUNICATIONS CONTRACTS - A HANDBOOK FOR CUSTOMERS AND SUPPLIERS, by David Bartell, William Flynn, BWCS 1999, 530 pages.

This book contains a variety of model contracts covering the provision of telecommunications services, sale/purchase of equipment, facilities management and outsourcing.

<http://www.bwcs.com/globtel1.html>

12.2. Websites

Estonian Supreme Court

The website of the Estonian Supreme Court, which is a cassation court also deciding on constitutional matters, provides information on court history, competence, composition, rules of procedure, constitutional texts, decisions and statistics on civil, criminal and administrative law cases.

URL : <http://www.nc.ee/english/>

Norwegian Data Inspectorate

The Home Page of the Data Inspectorate, which is an independent administrative body under the Norwegian Ministry of Justice set up to ensure enforcement of the Act relating to Personal Data Registers, provides guidelines on the protection of privacy, data security and the rules that apply to the processing of personal data.

URL : <http://www.datatilsynet.no/>

12.3. Events

Fraud and security in the converging telecommunications market, Monday 6th – Wednesday 8th March 2000, Forte Posthouse Bloomsbury, London.

This event will analyse from a technical, operational and legal perspective the security issues raised by the use of new technologies in the telecommunications and e-commerce business.

Conference website : <http://www.iir-conferences.com/fraud/frameset.html>

The Second International Congress on Direct Democracy: Greece, June 2000.

This international Congress will examine the role of modern technology as a tool for citizen participation in the decision making process.

Congress website:

http://www.auburn.edu/academic/liberal_arts/poli_sci/tann/prague/second.htm

ECIS 2000: A Cyberspace Odyssey, Trends in Information and Communication Systems for the 21st Century, 3-5 July 2000, Vienna, Austria.

The 8th European Conference on Information Systems will review the development of the Internet and the World Wide Web and assess their economic relevance.

Venue: Vienna University of Economics and Business Administration, Vienna, Austria, Email: ecis2000@wu-wien.ac.at

Conference website: <http://ecis2000.wu-wien.ac.at/>

KnowRight 2000 - InfoEthics Europe, 26 - 29 September 2000, Vienna, Austria.

Organised by the Austrian Computer Society and supported by UNESCO this conference will analyse issues of NetLaw, NetEthics and Free Flow of Information in the Information Society.

Conference website : <http://www.ocg.at/knowright2.html>

7th ACM Conference on Computer and Communication Security, 1-4 November 2000, Athens, Greece, Athens Chamber of Commerce and Industry.

Hosted by the Athens Chamber of Commerce and Industry, this conference will focus on topics including authentication, access control, key management, cryptography, licensing and intellectual property.

Conference website : <http://www.ccs2000.org/>

13. Publisher, Editor and Contributors

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