The Honourable Member has informed the Commission about the existence of a draft law in Spain which aims to govern the advertising of alcoholic drinks. The provisions contained in the draft law include a total ban on television advertising between 8 a.m. and 9 p.m., the requirement that authorised radio advertising be accompanied by a message drawing attention to the harmful effects of alcohol consumption, a ban on outdoor advertising on the public highway of drinks with a volume higher than 20%, a ban on targeting young people under 18, and a ban on advertising in publications aimed at young people.

As the Honourable Member points out, the Court of Justice felt in its Gourmet judgment (C-405/98) that the ban on all advertising of alcohol might affect the marketing of products from other Member States more heavily than the marketing of domestic products, and that it also had an effect on the cross-border supply of advertising space. Considering, however, that such a restriction may be justified by the protection of public health, it felt that Articles 28 and 49 of the Treaty on the free movement of goods and services did not preclude a prohibition on advertising, unless it was apparent that, in the circumstances of law and of fact which characterise the situation in the Member State concerned, the protection of public health could have been ensured by measures having less effect on intra-Community trade. It is therefore necessary to take this case law into consideration when assessing whether the measures described by the Honourable Member are compatible with Articles 28 and 49. Assuming that there is an obstacle to the free movement of goods and services, it will be necessary to examine whether the provisions of the law adhere to the principle of proportionality, i.e. that they are appropriate for achieving the objective pursued and that there is no less restrictive measure which could achieve the same result. The Commission is prepared to discuss the drafting of the law with the Spanish authorities, if they so desire, in order to forestall the introduction of measures which may turn out to be contrary to Community law.

The restrictions which could ensue from the adoption of the measures described would not, however, be similar to those involved in the Commission complaint concerning the Evin law. This complaint relates to obstacles to the broadcasting of sports events by broadcasters established on the territory of the Member State in which the restrictive legislation exists. The hypotheses mentioned by the Honourable Member concern restrictions which could affect broadcasts from other Member States. In this respect, the Court of Justice pointed out in its Agostini judgment that the 'Television without frontiers' Directive (1) ‘does not in principle preclude application of national rules with the general aim of consumer protection’, on the condition that they do not involve ‘secondary control of television broadcasts in addition to the control which the broadcasting Member State must carry out.’ It is stipulated that such measures ‘must not prevent retransmission, as such, in its territory of broadcasts from this other Member State’ (2).

(2) CJEC, 9 July 1997, Agostini, C-35/95 and C-36/95, ECR 1997 p. I-03843, points 34 and 38.
where registrars, registrants and the Registry are included, WHOIS databases are an essential instrument to promote users' confidence and to allow the good functioning of the .eu TLD. In order to ensure that WHOIS databases are efficiently used, it is necessary to take into account all legitimate interests.

Which mechanisms does the Commission intend to implement to ensure that IP right holders have a direct and fast access to WHOIS databases and obtain all necessary information to protect their rights?


Answer given by Mr Liikanen on behalf of the Commission
(26 August 2002)

Regulation 733/2002/EC of the Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain (TLD) (1) provides in Article 5, paragraph 1 as part of the public policy provisions the 'treatment of intellectual property and other rights'. Within this framework the Commission is required to adopt public policy rules for the implementation of the .eu TLD, in accordance with the procedure described in Article 6, paragraph 3 of the Regulation and after consultation with the selected Registry. These public policy rules would also aim at ensuring an adequate level of protection for intellectual property right holders in addition to the possibility provided already in the Regulation for holder of prior rights recognised or established by national and/or Community law to register their names during a 'sunrise' period.

The purpose of the Whois database is the provision of information about the technical points of contact that administer the different domain names of a particular TLD. When adopting the public policy rules, the Commission will take into account all the legitimate interests at stake and comply with the existing community legal framework.

In particular, it should be stressed that general information about information society service providers are required to be accessible under the Directive 2000/31/EC (Directive on electronic commerce) and that following recital 12 of the Regulation, 'Whois' type of databases should be in conformity with Community law on data protection and privacy.


WRITTEN QUESTION E-1942/02
by Jens-Peter Bonde (EDD) to the Commission
(3 July 2002)

Subject: Prostitution as an occupation

An article appeared in Svenska Dagbladet on 8 June 2002 concerning prostitution as a legitimate occupation on an equal footing with other jobs.

What is the Commission’s position on this view (which I do not share)?

Answer given by Mrs Diamantopoulou on behalf of the Commission
(27 August 2002)

The Commission would first remind the Honourable Member that the issue in question falls within the national competence of the Member States and that each Member State may opt either to consider prostitution as a form of exploitation to be abolished or as an occupation to be regulated. The dividing