

[DE] What Is an Advertising Programme? Court Decides

IRIS 1998-8:1/11

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In a judgment given on 27 January 1998, the Berlin Administrative Court upheld a television company's appeal against a Media Authority decision instructing it to indicate, at the beginning and in the course of a programme, that it was an extended advertising programme.

The programme in question presented Berlin restaurants and hotels, none of which paid to be featured. The term "advertising programme" is defined neither in the National Broadcasting Agreement nor in the broadcasting law of the Länder.

In deciding whether advertising was involved, the Court relied on Article 1 (b) of Directive 89/552/EEC and on Article 2, para. 1 of the European Convention on Transfrontier Television. It stated that legal terms not defined in national law must be interpreted in a manner consistent with the Directive, Article 1(b) of which made it <http://services.obs.coe.int/en/index.htm> clear that the term "television advertising" applied only when air-time was made available for payment or similar consideration. The court accordingly found that presenting restaurants without charging for doing so could not be regarded as advertising.

