[DE] Update of the Structural Paper of the Directors of the Regional Media Authorities (DLM) about the Distinction between Broadcasting and Media Services

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On the occasion of the directors' conference held 7 and 8 December 1998 in Munich, the directors of the regional media authorities have completed the first structural paper dated 16 December 1997 about the distinction between broadcasting and media services after a hearing of representatives of the association of private cable distributors (Verband Privater Kabelnetzbetreiber e.V. - ANGA), of the study group for private broadcasting (Arbeitsgemeinschaft Privater Rundfunk - APR), of the federal association of German newspaper publishers (Bundesverband Deutscher Zeitungsverleger - BDZV), of the association for private broadcasting and telecommunication (Verband Privater Rundfunk und Telekommunikation - VPRT) and of the Hans Bredow Institute (HBI) in April 1998 (see IRIS 1998-7: 15).

This distinction is particularly important as, unlike broadcasting programmes, media services need not be registered and licensed, while the transmission of private broadcasting programmes requires a license issued by the relevant regional media authorities.

In the opinion of the DLM, the hearing has confirmed the relevance of opinion-making as the basis for distinguishing broadcasting from media services. In this context, the determining factors are the broad effect, the topicality, and the suggestive impact of the offering. The basic possibility of qualifying single services mentioned in the federal agreement on media services (Mediendienstestaatsvertrag - MStV) as broadcasting has been maintained. For instance, a teleshopping programme transmitted in the context of the regular programme under the responsibility of the broadcaster will be considered as being part of this television programme and therefore entirely falls under the restrictions regarding the amount of time for commercial breaks. In addition to an assessment of the contents of the offer, the DLM has adopted a new approach by also taking into account the qualitative and quantitative aspects of the transmission technology used, in particular for polling services as defined by § 2, para. 2, No.4 of the MStV. Apart from the explicit observation that, given the actual technology, polling services are not to be qualified as broadcasting, the structural paper contains a differentiation as to the transmission paths used for the polling service. Services like near-video-on-demand and video-on-demand in the future using "classical" broadcasting transmission paths are qualified by the

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DLM as having basically the same suggestive impact as normal broadcasting programmes; however, the DLM presently believes that, due to the lack of broad effect, electronic video-on-demand presently does not fall under the term "broadcasting". As long as the identical contents of a broadcasting programme are transmitted via internet or using ADSL technology (Asymmetric Digital Subscriber Line), which allows high transmission rates via the standard narrowband telecommunication network, the DLM also believes that this cannot be qualified as broadcasting given the actual standard of technology. In view of this situation, the DLM does not feel urged to carry out intensive examinations of offerings based on other transmission paths than the classical broadcasting ones.

Aktualisierte Fassung des ersten Strukturpapieres zur Unterscheidung von Rundfunk und Mediendiensten vom 7./8. Dezember 1998.

Updated version of the first structural paper about the distinction between broadcasting and media services, dated 7/8 December 1998.

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