[AT] Draft Bill on Exclusive TV Rights

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On 4 April 2000, the Bundeskanzleramt (Federal Chancellery) published a draft Federal Law on the exercise of exclusive television broadcasting rights (Fernsehexklu

sivrechtegesetz - FERG) and a related draft decree on the assessment of such rights (whereby any comments must be submitted within a six-week period).

The FERG is primarily designed to transpose Article 3a of the revised "Television Without Frontiers" Directive (Directive 89/552/EEC, amended by Directive 97/36/EC). According to Article 4 of the draft Bill, the Federal Government must designate, by means of a decree, events that are of major importance for Austrian society. The draft decree, meanwhile, lists the Vienna Philharmonic's New Year Concert and the Vienna Opera Ball, as well as numerous sporting events. Television companies that have acquired exclusive broadcasting rights over such an event must ensure that the event can be watched on a freely-accessible television channel in Austria by at least 70% of TV licence-holders or persons exempt from paying the licence fee, in accordance with the provisions set out in the decree. This duty is deemed to be fulfilled if the television company has made a demonstrable and reasonable attempt, taking normal market conditions into account, to facilitate free TV access to the event (Article 3 of the Bill).

The FERG goes beyond the requirements of Article 3a of the "Television Without Frontiers" Directive insofar as it provides for what could be called an autonomous right to short reporting (Article 5). Television companies that have acquired exclusive rights to broadcast an event in the general public interest (i.e. an event whose importance is such that it is expected to receive widespread media coverage in Austria or in another named party to a related agreement) or which, for reasons of circumstance, are the only ones in a position to report such an event, must allow, on demand, any registered television company in a country that is party to the EEA Agreement or to the European Convention on Transfrontier Television to show short reports on that event for its own broadcasting purposes free of charge. The right to short reporting includes an entitlement to record the signals broadcast by the TV channel concerned and to use them to produce and broadcast a short report. From a copyright point of view, the original broadcaster is therefore obliged to issue a new licence for this purpose.

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The draft Bill stipulates that breaches of the duty to facilitate free access and infringements of the right to short reporting are punishable under administrative law (with fines ranging from ATS 500,000 to ATS 800,000).

Entwurf eines Bundesgesetzes samt Verordnung über die Ausübung exklusiver Fernsehübertragungsrechte, Geschäftszahl 671.366/19-V/4/00.

http://www.parlinkom.gv.at/archiv/XXI.pdf/ME/00/00/000040.pdf

Draft Bill and Decree on the exercise of exclusive television broadcasting rights, file no. 671.366/19-V/4/00

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