

[DE] Interpretation of the Concept of Broadcasting in Proceedings Concerning the 'Monitor-Journal'

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The Administrative Court of the Saarland recently had to decide whether teletext-type pictures and graphics shown on silent endless loop by the "Monitor-Journal" via monitors installed on commercial premises, e.g. near department store cash points, should be classified as broadcasting. The material shown comprises news, advertisements, miscellaneous items and information supplied by client firms. It is put together at the Journal's office and fed via telephone into the client's computer. Material which the client wants included must be supplied to the Journal prior to transfer. Showing begins when the client calls up the material. He cannot change the programme.

The Court held that the Monitor-Journal was a form of broadcasting, since it matched all the criteria laid down in the State Broadcasting Agreement and the regional broadcasting laws. These texts define broadcasting as the compilation and dissemination to the general public of programmes of all kinds in words, sound and pictures, via hertzian wave or cable. In law, the concept includes teletext. The Court found, first of all, that the Monitor-Journal was a programme. The decisive journalistic element was already clear from the fact that news items were selected, and public opinion influenced in this way. The Monitor-Journal was also intended for the general public, since potential viewers could not be individually identified beforehand, and were not personally connected with one another. All the shopowner's potential customers were also potential viewers. Having contractual or pre-contractual links with the shop-owner did not affect their general public status. In the case of Pay-TV, there was also a contractual link, but no one doubted that Pay-TV was broadcasting. Finally, the Monitor-Journal was also disseminated. The term "dissemination" would be inapplicable only to services which operated within a single building. But this was not the case with the Monitor-Journal, which was intended to be shown in various places and not just in one store. The fact that the service could not be simultaneously received by unlimited numbers of people was irrelevant. There was no constitutionally valid reason for expanding the ordinary legal definition of broadcasting in this way. The only decisive element in broadcasting was mass communication, which applied to the Monitor-Journal. The Court also used this argument to dismiss the operator's objection that the Monitor-Journal was not broadcasting because it was fed into the shop-owner's computer by telephone. It held that broadcasting did not necessarily imply that, when a programme was transmitted, radio technology in the strict sense must be available for this

purpose. Here too, it assumed that the decisive factor was not the way in which the material was transmitted, but the fact of its reaching a mass audience. The fact that it was stored on the shop-owner's computer along the way was also irrelevant. Even when conventionally broadcast programmes had to be stored before reception, they did not cease to be broadcasting. Once again, reaching a mass audience was the decisive factor.

Urteil des Verwaltungsgerichtes des Saarlandes, 1 K 297/92.

Judgment of the Administrative Court of the Saarland, 1 K. 297/92.

