[DE] Distinction Between Media Services and Broadcasting

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The Direktorenkonferenz der Landesmedienanstalten (Conference of Regional Media Authority Directors - DLM), which comprises representatives of the German Land media authorities responsible for licensing and supervising private broadcasting, is currently discussing the distinction between broadcasting and media services. It has already decided that the concept of broadcasting can no longer be defined according to means of transmission. Technical progress and the resulting convergence of content mean that new definition criteria are needed. Practically speaking, the DLM believes that the distinction depends on the type of presentation, which is characterised by the relevance of the particular service to the formation of opinion.

The legal background to this debate is provided by the new Article 4 of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on Youth Protection in the Media JMStV).
This states that the dissemination of pornography is prohibited in broadcasting, but permitted in telemedia (teleservices and media services) as long as it is only accessible to adults (restricted user group) (see infra). If a provider wishes to offer pornographic content, it is therefore important to decide whether the service is classified as a media service or as broadcasting. The DLM's current discussion was prompted by several claims presented to the Land media authorities that content was harmless under media law because it did not constitute broadcasting, but a media service. Thus the regulations that apply to broadcasting are not applicable and pornographic material may be disseminated in accordance with Article 4 of the JMStV. One such claim was made to the relevant Land authority by TV broadcaster Premiere for a porn channel that was to be operated by the Swiss company Erotic Media AG. So far the DLM has not reached a decision on the distinction between broadcasting and media services, despite setting up its own working group, which has drafted an as yet unpublished report on the subject. A final decision was expected at a special meeting held in early November.

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