# [AT] Erotic Channel Guilty of Serious Breaches

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In a decision of 5 November 2003, the Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria), ruled that X-Gate Multimedia Broadcasting GmbH had breached Article 32 paras. 2 and 3 of the Privatfernsehgesetz (Private Television Act - PrTV-G) through its operation of the satellite TV channel TV6. According to Art. 32 para. 2 PrTV-G, steps must be taken, either involving the time of broadcast or other measures, to ensure that minors cannot normally watch television programmes that may harm their physical, psychological or moral development. Under Art. 32 para. 3 PrTV-G, the unencrypted transmission of such programmes is only permitted if they are preceded by an acoustic warning or designated as such by a visual symbol throughout the broadcast. X-Gate Multimedia Broadcasting GmbH holds a licence to operate a special interest channel, which broadcasts a combination of teleshopping programmes and erotic films. Whereas so-called soft erotica is transmitted before 11 pm, other erotic programmes are shown after that time, some of which could be classified as pornographic in other countries (including neighbouring Germany) and should not therefore be broadcast. On 1 September 2003, X-Gate began broadcasting TV6 digitally and unencrypted. The channel's content as such was not queried by the supervisory authority. Although it included a large amount of sexual content, KommAustria did not think it should be classified as pornography, the broadcasting of which is prohibited under Art. 32 para. 1 PrTV-G. However, it did complain about the fact that the channel, as a result of a technical fault, was on air from 6 am to 8 am and that programmes were not designated as potentially harmful to minors by means of an acoustic warning or a visual symbol on the screen throughout the broadcast. KommAustria therefore considered that the channel had seriously violated the law and instigated proceedings for the withdrawal of the broadcaster's licence in accordance with Art. 63 para. 1 PrTV-G. In the first stage of the proceedings, it asked XGate Multimedia Broadcasting GmbH to rectify the situation from a legal point of view within three days of the decision being issued. According to KommAustria, this measure was taken bearing in mind the fact that TV6 could be received outside Austria. X-Gate Multimedia Broadcasting GmbH was also asked to read out various parts of the decision on the air at a specific time. If XGate Multimedia Broadcasting GmbH commits further offences, its licence may be withdrawn in accordance with Article 63 para. 3.2 PrTV-G.

*Decision of KommAustria of 5 November 2003, case no. KOA 2.A 100/03-49*

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