

[DE] Structural Paper on the Distinction Between Media Services and Broadcasting

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At its meeting on 6 November 2003, the Direktorenkonferenz der Landesmedienanstalten (Conference of Regional Media Authority Directors - DLM) adopted a structural paper on the distinction between broadcasting and media services.

This distinction is relevant under German youth media protection law to the permissibility of the transmission of pornography (see IRIS 2003-10:6). According to the recently published paper, the categorisation of a service as broadcasting does not depend on the electronic means of its transmission. Rather, the determining factor is the relevance of the content to the formation of opinion and its impact on those who receive it. Relevance to the formation of opinion is measured according to the impact, topicality and suggestiveness of a service. However, broadcasting cannot be conclusively defined according to these three elements, since it is not an abstract, fixed quantity, but a type characterised by its distinguishing features. Therefore, it can only be described according to its outward appearance, since the concept of broadcasting must be defined as a type, according to its distinguishing features. On the basis of these considerations, the structural paper sets out criteria and recommendations on the distinction between broadcasting and media services.

In accordance with these criteria, T-Online's "Vision on TV" project was categorised as a media service. This system enables customers to download films onto their computers. Two different variants are planned: a single download in the form of real-video-on-demand or a download via a special hard disk recorder, onto which films are downloaded when the network is not operating to full capacity. However, the application by Erotic Media GmbH for its "Erotic Media" service to be classified as a media service was turned down. The plan had been to offer two digital channels via the digital platform of pay-TV broadcaster Premiere, showing erotic and pornographic films at regular intervals. The DLM classified this service as near-video-on-demand; it could only be defined as a media service if films could be individually ordered and paid for.

DLM's Third Structural Paper on the Distinction Between Media Services and Broadcasting, 6 November 2003

Pressemitteilung der DLM vom 6. November 2003

<http://www.alm.de/aktuelles/presse/p061103.htm>

DLM press release of 6 November 2003

