

Progress in the Must-offer Debate? Exclusivity in Media and Communication

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“We’re in a good position!” This increasingly popular phrase is meant to transmit a sense of optimism; optimism that a company or branch of industry is in a position to spot opportunities in new markets or optimism that success will continue despite changes in the market. The markets involved may be defined according to geographical, technical or content-related criteria. In the audiovisual sector, for example, broadcasters are currently battling it out for a share in the various forms of distribution of audiovisual media services and the new markets that are being created as a result.

In order for a company that wants to provide audiovisual media services to be well positioned, what it needs more than anything else is content that is of interest to consumers. The key to success for such a company is its ability to offer such content on an exclusive basis, in other words if it owns an exclusive right to distribute it. At the same time, however, it must also position itself in the distribution market, for it needs to send the content to the customer in order to convert its exclusive right into financial reward. This is the theme tackled by this IRIS plus, which looks at the various dimensions of exclusivity in media and communication.

This IRIS plus considers the current debate on whether the obligation to transmit (must-carry) certain content should be replaced or at least supplemented by an obligation to offer such content (must-offer). The first legislative steps have already been taken in this direction. The article examines this question particularly with regard to the assessment under competition law of such a paradigm change, but also in view of the tension between competition law and copyright law. This very important IRIS plus is also closely linked to IRIS plus 2008-4 on media windows, which dealt with audiovisual media chronology, another aspect of exclusivity.

IRIS 2008-10 - Fortschritte in der Diskussion um Must-Offer ? Zur Exklusivität in Medien und Kommunikation - von Alexander Scheuer & Sebastian Schweda

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