[BE] Flemish Regulator, “20 Minutes Rule” and Horror Trailers

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In December 2008, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - monitoring and enforcement of media regulation) issued several interesting decisions. Two of them will be addressed below.

Firstly, the *Algemene Kamer* (General Chamber) condemned the commercial broadcasting corporation SBS Belgium for a triple breach of the so-called “20 minutes rule” during the broadcasting of the programme “Lost”. This rule, described in Article 101 § 5 of the *Omroepdecreet* (Flemish Decree on Radio-broadcasting and Television), requires a period of at least twenty minutes to intervene between each successive interruption during a programme. The Regulator rejected the defence raised by the broadcaster to the effect that the rule was abolished by the Audiovisual Media Services Directive 2007/65/EC: the Flemish broadcasting corporations have to honour the present provisions and conditions in the Decree. The broadcaster further challenged the second breach by arguing that the programme transmitted contained two separate episodes from the fourth season of “Lost”. The relevant part of the programme thus consisted of the end of episode 3 and the beginning of episode 4. As a consequence, the “20 minutes rule” did not apply. The Regulator cited Article 2.10 of the Decree, which defines a programme as the entire content of sound and/or images or other signals in any form which is provided by a broadcasting company under a separate title. At no time during the transmission had it been made clear to the viewers that two separate episodes of the series were being transmitted. No clear optical distinction was inserted. As a result, a triple breach of Article 101§5 was established. Because of the gravity of the infringement (three breaches in one programme) and the fact that SBS Belgium had been sanctioned on several occasions for the same infringement in the past (Decisions 2008/012, 2008/031, 2008/041), the Regulator decided to impose an administrative fine of EUR 15,000.

Secondly, the *Kamer voor Onpartijdigheid en Bescherming van Minderjarigen* (Chamber for Impartiality and the Protection of Minors) condemned the commercial broadcasting corporation VMMa for having transmitted a trailer in which three late night horror movies were announced at six p.m. According to Article 96 § 1 of the Flemish Media Decree, broadcasting companies may not broadcast any programmes which could harm the physical, mental or moral

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development of minors, unless the choice of the time of transmission or technical measures guarantee that minors in the broadcasting area would not normally see or listen to those programmes (2nd clause). This provision also applies to announcements for programmes (4th clause). By broadcasting the announcement in uncoded form at six p.m., no such guarantee was offered that children would not, in the normal course of things, see it. The Regulator was of the opinion that the trailer contained explicit images of atrocity and violence that were frightening, likely to leave a lasting impression on children and likely to provoke feelings of anxiety which could harm children's physical, mental or moral development. Nonetheless, as the transmission was partly the result of a mistake and given the fact that the broadcasting corporation was deemed likely to take all necessary measures to avoid future infringements, no penalty was imposed.

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http://www.vlaamseregulatormedia.be/beslissingen/2008/2008_077.pdf

VRM vs. NV SBS Belgium, 15 December 2008 (No 2008/077)

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http://www.vlaamseregulatormedia.be/beslissingen/2008/2008_083.pdf

Ann Dedecker vs. NV VMMa, 16 December 2008 (No 2008/083)

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