[AT] BKS Submits Questions to ECJ on Interpretation of TWF Directive

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In a decision of 31 March 2011, the Austrian Bundeskommunikationssenat (Federal Communications Senate - BKS) submitted questions to the Court of Justice of the European Union (ECJ) as part of the preliminary ruling procedure concerning the interpretation of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive).

The case before the BKS concerned the depiction of a couple dancing from the left to the centre of the bottom third of the screen, together with the caption “Dancing Stars ab Freitag 20:15” (Dancing Stars starts Friday 8.15 p.m.) during a feature film shown on public service television. The Publikumsrat (Viewers’ Council) of Österreichischer Rundfunk (Austrian public service broadcaster - ORF) considered this to represent advertising for an ORF production and therefore as self-advertising, a form of commercial communication. It thought it was clearly designed to boost viewer ratings for Dancing Stars, make the programme more attractive for advertisers and thereby generate greater advertising revenue. The advertisement had not been labelled as such. On the other hand, ORF argued that it had been a programme announcement which should be treated as a programming element rather than as advertising.

The BKS held that, in the present proceedings, the only legal question to be addressed was whether programming elements in which the TV broadcaster referred to its own programmes were covered by the advertising rules laid down in Article 13(1) of the 2007 version of the ORF-Gesetz (ORF Act) and, if so, whether they should be separated from other programme material in accordance with Article 13(3) ORF-Gesetz and whether the rules on the insertion of advertising set out in Article 14(7) and (8) ORF-Gesetz applied.

Since the relevant national legislation had been introduced in order to implement Directive 89/552/EEC, the BKS adjourned the proceedings and referred these questions to the ECJ.

Bescheid des BKS vom 31. März 2011 (GZ 611.942/0002-BKS/2011)

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