

[BE] Flemish Digital-Only Channel Sanctioned for Broadcasting Harmful Content for Minors

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On Sunday 1 May 2011 in the early evening (around 18:20), the programme True Blood was broadcast on the Flemish digital-only channel Acht. This episode contained horrific images, such as a chained man in a dungeon between dead bodies covered with blood. The Vlaamse Regulator voor de Media (Flemish Media Regulator - VRM) ruled that the broadcaster infringed Art. 42, §2 of the Mediadecreet (Flemish Broadcasting Act).

Article 42 of the Flemish Broadcasting Act contains rules protecting minors against harmful content. Article 42 §1 includes an absolute ban on linear television programmes that might seriously harm the physical, mental or moral development of minors, in particular programmes with pornographic scenes or gratuitous violence. Article 42 § 2 contains a relative ban on programmes that are likely to impair the physical, mental or moral development of minors. Such programmes can be broadcast, but only on condition that it is ensured, by selecting the time of the broadcast or by any technical measure, that minors will not normally hear or see such broadcasts. Additionally, if such programmes are broadcast in an un-encoded manner, these programmes need to be preceded by an acoustic warning or be recognisable during the broadcast by means of a visual symbol.

The broadcaster argued that it had not infringed Article 42 §2 in its broadcast of True Blood early in the evening. Given that Acht is a digital-only channel, it can only be accessed via a decoder. Such a decoder can be used for parental control purposes, because access to specific content could be blocked for minors through the electronic programme guide. In particular, given that Acht labels True Blood episodes as 'Adult 17', access to the programme can be blocked via the parental control system. In other words, a proper setting of the decoder could limit minors' access to this content.

VRM stressed that the images might impair the physical, mental or moral development of minors. As a result, this programme should be accessible under the conditions of Article 42 §2. VRM verified whether technical measures would have ensured that no minors would have access to these images. Although such a parental control system could function optimally, practice indicates that parents are not aware of the existence of this system: only 0.2% - 0.9% of digital television subscribers use this option. Therefore, in its decision of 30 August 2011,

VRM argued that the technical measures taken by Acht could not be labelled as a sufficient protection as required under Article 42 §2. VRM only issued a warning, because Acht announced that it would support the launch of an information campaign about parental control.

P. Gonnissen t. NV Bites Europe, beslissing 2011/017, 30 augustus 2011

<http://www.vlaamseregulatormedia.be/media/16800/2011-017.pdf>

P. Gonnissen versus NV Bites Europe, decision 2011/017, 30 August 2011

