[AT] BKS on Programme-Specific Advertising in ORF Media Library

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In a decision of 11 November 2013, the Austrian Bundeskommunikationssenat (Federal Communications Board - BKS), following a request from the Austrian public broadcaster Österreichischer Rundfunk (ORF) to amend the concept for its media library, commented on the definition of sponsorship in non-linear media services.

The procedure followed a complaint by the lower-instance Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) about ORF's plans to amend its marketing concept. KommAustria had found, on the one hand, that ORF sold advertising slots that were not tied to particular programmes (i.e. the advertisers had no influence over when their advertisements were broadcast). However, ORF also wanted to enable advertisers to book advertising slots linked to specific programmes. According to KommAustria, this form of marketing constituted sponsorship in the sense of Article 1a(11) ORF-Gesetz, which should be interpreted as including, in addition to traditional sponsorship, all commercial communications marketed in direct and indirect connection with the main programme content. Since Article 17(3) ORF-Gesetz prohibited the sponsorship of news and political information programmes, the relevant part of ORF's request should be rejected.

In the appeal procedure, the BKS only partially agreed with KommAustria's ruling. The possibility of booking specific advertising slots alone could not justify the assumption that an advertiser taking up such an option was actually engaging in a form of sponsorship. In traditional linear television, it was also possible and admissible to book advertising slots during news programmes, although it should be noted that this was often due to the high viewing figures of such broadcasts. Although a direct content-related link could indicate sponsorship, the BKS thought that a blanket ban on programme-specific advertising was excessive and/or premature. The ORF-Gesetz did not provide any justification for such a ban on all forms of commercial communication linked to news programmes.

For these reasons, ORF should be allowed to sell advertising slots specifically in connection with on-demand news and political information programmes, as long as there was no connection of any kind between the content of the commercial communication and that of the on-demand service.

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Entscheidung des BKS vom 11.11.2013 (GZ 611.998/0004-BKS/2013)

http://www.bundeskanzleramt.at/DocView.axd?CobId=52981

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