[DE] Broadcasting time for "independent third parties"

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Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

The entry into force on 1 January 1997 of the Agreement on Broadcasting between the Federal States in United Germany in the form of its third amendment dated 26 August - 11 September 1996 (RfStV) introduces rules in the Federal Republic's broadcasting regulations which use various instruments in order to protect diversity of opinion in private broadcasting (see also IRIS 1996-8: 12).

Included in this complex of standards is a measure to ensure diversity (Section 30, no.1 in conjunction with Section 31 of the RfStV) by allowing broadcasting time to third parties which are independent of the main programme organiser. According to Section 31, paragraphs 1 and 3 of the RfStV the presentation of television programmes (cf. Section 25, paragraph 4(1) of the RfStV) must be editorially independent of the main programme; the supplier of the window may not be legally dependent on the main programme organiser. It us now disputed whether the ancillary supplier of a programme broadcast by the window organiser must also be legally independent of the main television organiser as stipulated in the legislation.

The debate arises mainly in respect of programmes broadcast by the DCTP (Development Company for Television Programs) via the private broadcaster RTL. As these magazine programmes are produced by major German publishing houses which, either directly or through their parent companies, are at least part-owned by the broadcaster or the DCTP, it is questionable whether these programmes are in fact produced by an independent party. In this context the merger of CLT and UFA in mid-January should perhaps also be looked into. CLT-UFA is an undertaking covering some 20 radio and television stations throughout Europe, including RTL. Moreover, UFA's parent company Bertelsmann, via its subsidiary publishing house Gruner & Jahr , owns one of the television magazines and has a minority holding in Spiegel , which in turn part-owns DCTP.

The matter is settled by the regulations contained in the RfStV on the attribution of programmes (Section 31, paragraph 3 in conjunction with Section 28 of the RfStV). This covers very different forms of participation which may be established by applying the principles of company law, taxation law and commercial law. The Conference of Directors of Regional Media Authorities (Direktorenkonferenz der Landesmedienanstalten DLM) has now drawn up a guideline on the interpretation of these conditions according to which ancillary suppliers must also be independent of the companies. Because this interpretation is not shared by all the

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regional media institutions, whose supervisory boards have still to approve the proposed guideline, final clarification of the problem is still awaited.

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