[DE] Twitch.tv channel requires broadcasting licence

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At its meeting in Berlin on 21 March 2017, the Kommission für Zulassung und Aufsicht (Commission on Licensing and Supervision - ZAK) of the Landesmedienanstalten (regional media authorities) decided that the PietSmietTV Internet streaming channel should be banned unless it applies for a broadcasting licence by 30 April. The channel mainly streams Let's Play, that is to say, video game footage, 24 hours a day, 7 days a week, on the Twitch.tv Internet platform. According to the ZAK, it is a broadcasting service and should therefore be licensed.

Generally speaking, the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement) defines broadcasting as a linear information and communication service aimed at the general public. It comprises the distribution of selected content on the basis of a programme schedule which the user cannot influence in terms of either the timing or content of the transmission. The media watchdogs consider that PietSmietTV meets these criteria. The ZAK hopes that its decision will draw the provider's attention to the fact that it is infringing licence obligations and prompt it to apply to the relevant regional media authority, the Landesanstalt für Medien Nordrhein-Westfalen (North Rhine-Westphalia regional media authority - LfM), for a licence in the near future.

However, Internet users who upload videos to on-demand services such as YouTube do not require a broadcasting licence. Licences are only required by linear services, that is to say, those that are transmitted live or, in any case, simultaneously for all users. Normal online video services therefore do not need a licence. However, a licence may be needed for streaming services, especially if they are provided on a regular basis. The service must also have an editorial basis, since broadcasting must follow a programme schedule. If such a basis exists, the individual case is examined.

In practice, the exemption for services with fewer than 500 potential users is hardly relevant because it is not the actual number of users that counts. The mere possibility that more than 500 users are able to access the service can suffice. The exemption therefore only applies if the number of users is limited in advance, such as by technical means. Since none of the main streaming services impose such a limit, the minimum threshold can only be observed in practice by users with private servers that do not permit more than 500 viewers.

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In view of the sharp rise in the number of Internet streaming services, which are similar to broadcasting, the ZAK is currently devoting a lot of attention to this issue. At the start of the year, it had complained about live Internet coverage of the 2017 World Handball Championship for the same reasons (see IRIS 2017-5). It believes the Internet is full of services similar to broadcasting and that the law should be changed in the near future so that the same conditions apply online as for offline broadcasting services.

Against the background of technical and content-related changes to streaming services, many experts are asking whether the concept of broadcasting defined in the Rundfunkstaatsvertrag is outdated, and whether these streaming services should be licensed. The media authorities have repeatedly suggested that the concept of broadcasting should be adapted to the ongoing development of the media market.

Erläuterungen zur PietSmiet TV-Entscheidung der ZAK

http://www.die-medienanstalten.de/fileadmin/Download/Themen/Zulassung/Erl%C3%A4uterungen_der_ZAK_zur_PietSmiet-Entscheidung.pdf

Explanation of the ZAK's PietSmiet TV decision

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