

[DE] Berlin Administrative Court decides Bild live streams are not broadcasting

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In a ruling of 18 October 2018 (case VG 27 L 364.18), the Verwaltungsgericht Berlin (Berlin Administrative Court - VG) upheld an emergency application from a publisher that sells the Bild newspaper and operates several Internet video services on the Bild website against a prohibition order issued by the Medienanstalt Berlin-Brandenburg (Berlin-Brandenburg media authority - mabb), which is responsible for monitoring broadcasting in the region. After a summary examination of the factual and legal elements of the case, in which the publisher's interest in suspending the order was weighed against the mabb's interest in enforcing it, the court concluded that the video services did not constitute broadcasting.

The case concerned the Internet video services "Die richtigen Fragen", "BILD live" and "BILD-Sport - Talk mit Thorsten Kinhöfer", which are streamed live on the Bild website and various social media such as Facebook and YouTube. In July 2018, the Medienanstalt Berlin-Brandenburg decided that this constituted unauthorised broadcasting because the services were linear audiovisual information and communication services aimed at the general public and designed for simultaneous reception. After filing an objection, the mabb prohibited the organisation and distribution of the live video stream unless, by 3 September 2018, an application was submitted for a licence, which is required to distribute broadcasting in Germany.

The publisher lodged an action against this decision and, at the same time, requested that the action be given suspensive effect under a summary procedure in order to delay the legal effect of the decision pending a final ruling on the principal complaint. The VG Berlin granted this request. It established that the video services concerned were, in accordance with the concept of broadcasting defined in the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement), designed for simultaneous reception by the general public using electromagnetic oscillations. However, it was debatable whether they were provided "within a schedule", which is also a necessary part of the German concept of broadcasting. This aspect was controversial and had not yet been conclusively clarified by the courts. In particular, there was no consensus over whether, in order to meet this criterion, programmes had to be a certain length, there had to be a certain number of them, or whether they had to directly follow one another. It was also questionable whether the distribution of individual linear programmes should be classified as broadcasting, or whether they should be treated as a collection of

individual linear programmes instead. There was insufficient time in a summary procedure to provide definitive answers to such difficult legal questions. Therefore, it was decided that the effects of the decision should at least be postponed, as otherwise the publisher might lose audience reach and its activity, which was protected under the Basic Law, could be temporarily restricted, and this carried more weight than the mabb's interest in the enforcement of broadcasting law.

Beschluss der 27. Kammer des VG Berling vom 18.10.2018 (VG 27 L 364.18)

<https://www.berlin.de/gerichte/verwaltungsgericht/presse/pressemitteilungen/2018/pressemitteilung.750889.php>

Decision of the 27th chamber of the Berlin Administrative Court, 18 October 2018 (VG 27 L 364.18)

