



Institut für Europäisches Medienrecht
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Plenary: Non-linear Services — Market Evolution & Regulatory Challenges “Regulation of non-linear audiovisual media services in Germany”

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Regulation of
non-linear avms
in Germany
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AVMSD

B German Media Law Definitions

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What we are looking for:

- Elements of the definition
 - service; editorial responsibility; media service provider; principal purpose: provision of programmes; aim: to inform, entertain, educate; addressees: general public;
 - provided so as to allow individual choice (item/time) from the provider's catalogue
 - including text-based content services accompanying programmes (EPG, subtitles)



1) Constitutional vs Ord. Law

- Constitutional law: broadcasting
 - broad, dynamic notion aimed at effectuating the Art. 5(1), 2nd s. Basic Law (GG) regulatory goals, *i.e.* to preserve diversity; positive obligation on legislator to set framework
 - impact on individual/public formation of opinion; distinctive features: current/topical, mass impact/wide-spread, influencing
 - BVerfG: graduated approach is legitimate



Definitions (2)

– Ordinary law

- Interstate Treaty on Broadcasting (“*Rundfunkstaatsvertrag*”, *RStV*) and Federal Act on Telemedia (“*Telemediengesetz*”)
- *RStV* covers
 - television broadcasting (“*Fernsehen*”)
 - sound broadcasting/radio (“*Hörfunk*”)
 - different forms of telemedia, *inter alia*:
 - » telemedia service similar to broadcasting
 - » **television-like (= on-demand avms)**
 - » journalistic-editorial (e.g. press-like)
 - » general/others (*i.a.* purely private)



Definitions (3)

2) Different possible approaches

- ‘Online remit’ of PSB
 - direct entrustment with offering of certain telemedia services
 - competence to define further services
- Construction of licence fee obligation
 - linked at availability of (TV/radio set or “new kind of reception device”
- Telecommunications law
 - transposition of ITU ‘Radio Regulation’

Definitions (4)

- RStV definitions
 - broadcasting (“*Rundfunk*”)
 - linear information and communications service
 - aimed at general public and simultaneous reception; organisation and distribution of av or audio offers (“*Angebote*”); according to a schedule; by electro-magnetic oscillation
 - includes services which are encrypted or available against specific fee only
 - telemedia services (“*Telemedien*”)
 - which is neither broadcasting nor a telecommunications (based) service



Definitions (5)

3) Details (or: “lesson learned?”)

- not broadcasting (§§ 2(1), (3), 20(2), 54 *et seq.* RStV), *i.e.*
 - not a linear information & comm. service
 - push services controlled by provider; not a journalistic-editorial offer; services providing programmes on a pay-per-view basis
- on-demand avms (§ 58(3))
 - services with catalogue-based content, which is TV-like and provided to allow on-demand access at a time chosen by user



Regulatory framework

- no licence needed (§ 54(1), 1st S.; unless ... § 20(2) RStV)
- ‘press law’ obligations/rights
 - journalistic ethics must be observed, information must be duly verified (§ 54(2))
 - ‘masthead’/imprint (§ 55)
 - right to information (§ 9a)
 - right of reply (§ 56)

A

B

C Regulation

D

E



Ratione materiae (2)

– commercial communications

- general principles (§ 7 RStV)
 - no prejudice to human dignity/discrimination; not misleading or harming consumers; not encouraging behaviour which is prejudicial to health/safety/environment
 - no influence on programmes
 - clearly recognisable and distinguishable; no subliminal techniques; kept quite distinct
 - long advertisements; virtual advertising
 - no surreptitious advertising/thematic placement; product placement (§ 44)
 - no appearance of news presenters
 - no political, ideological, religious advertising
 - alcoholic beverages; tobacco: § 21b pTAct₁₁



- sponsorship rules (§ 8 RStV)
- rules on game/quiz shows (§ 8a)
- plus (if pay-per-view):
 - rules on insertion of advertising (§ 7a)
 - rules on duration of advertising (§ 45)
- other (‘safeguard of pluralism’, if on pay-per-view basis)
 - exclusive rights on major events (§ 4)
 - right to short reporting (§ 5)
 - European works; own, commissioned and co-productions (§ 6)



Ratione materiae (4) / ratione personae

- protection of minors
 - illegal offers; exceptions when provided in closed user-groups (§ 4 JMStV)
 - only age-suited offers: technical means, watersheds; offers kept distinct from those targeting children (§ 5)
 - protection of minors in advertising (§ 6)
- jurisdiction/exceptions to freedom of reception principle
 - application of Art. 2(3) AVMSD (§ 2 TMG)



Distribution of competencies

Public service vs private media

- ‘self-control’ by psb’s (bodies)
- state media authorities competent for private media
 - supervision on telemedia (§ 59(2)-(7))
 - advertising: partly also co- and/or self-regulation
 - youth protection: Commission for the protection of minors in the media (KJM) and accredited organisation of voluntary self-control (§§ 13 *et seq.*, 21-22 JMStV)

- films (FSK), other programmes (FSM/FSF)



Transposition

- partly done by 12th Amending Treaty (in force from 1/6/2009)
- main transposition by 1/4/2010 through
 - 13th Amending Treaty
 - signature expected end Oct. 2009/notificat.
 - ratification by State (“Länder”) parliaments
 - designation of competent authorities
 - Amending Act to Federal Act on





Lot's of success!

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