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### 1. Rules and regulations

- **13<sup>th</sup> amendment to the Interstate Broadcasting Treaty (13. RÄStV): product placement**

On October 30th, 2009, the 13th amendment to the Interstate Broadcasting Treaty was signed by the State Minister Presidents. The treaty will enter into force on April 1st, 2010, and is a further step towards the transformation of the AVMS framework into national law.

Central issue of this version of the Interstate Broadcasting Treaty is product placement, which will be allowed for commercial as well as for public television broadcasters. Commercial broadcasters are allowed to have product placement in own as well as in third-party productions, whereas public broadcasters are allowed to have product placement in third-party productions only. Labelling at the beginning and the end that the respective programme contained product placement is obligatory. This applies to all productions acquired by broadcasters after 19 December 2009 as well. Where broadcasters cannot verify with reasonable expense whether such productions contain product placement, a corresponding warning has to be aired before and after the respective broadcast.

Public-service and commercial broadcasters have protested against the planned provision in a joint letter to the state chancelleries which are responsible for drafting new media legislation for the Laender, pointing out the practical problems and the negative impact on transparency and consumer interests. ARD, ZDF and the media regulators are required to develop concurrent directives concerning the implementation of the new advertising regulation.

The 14th amendment to the interstate treaty will deal with question of media pluralism.

- **Gambling rules**

The Joint Commission on Licensing and Supervision of the Regulators (ZAK) has imposed fines for breaches of the statute against several broadcasters and will continue its policy of stringent application. In seven further cases regulatory offence procedures were initiated. A fine of 95.000 EUR was imposed on the broadcaster 9Live because of several breaches of the gambling rules such as missing transparency, feint of time pressure and missing information.

The Bavarian higher administrative court confirmed the gambling rules to a large extent. However, the time limit for gambling shows of 30 minutes resp. 3 hours was considered to be unlawful, as well as the extension of the gambling rules to telemedia. Also, some of the obligations to proof and to minute have to be adjusted.

- **Public value test**

The public-service broadcasting corporations are conducting "3-tier-test" for new or modified offers under the provisions of the 12th Interstate Broadcasting Treaty which entered into force on June 1<sup>st</sup>, 2009, amid an intensive debate of the industry regarding the procedures adopted by PSB. The German regulators, among others, in September presented a guideline which allows for the assessment of new or modified offers using twelve simple indicators and factors which classify the offers in four categories of impact. PSB has rejected the guideline as well as most other comments by the industry, disputing that third parties have any right of comment or competence in the matter.

The DLM's guideline is available at:

[http://www.alm.de/fileadmin/Download/Leitfaden\\_IPMZ\\_20090916.pdf](http://www.alm.de/fileadmin/Download/Leitfaden_IPMZ_20090916.pdf)

The broadcasting council of Mitteldeutscher Rundfunk (MDR) approved the telemedia offers [www.kikaninchen.de](http://www.kikaninchen.de) and [www.KIKAplus.de](http://www.KIKAplus.de) which are provided by the children's TV channel KI.KA. About the storage duration of contents will be decided on the basis of content downloads and views after a period of three years.

- **Internet radio**

The regulators have developed a standard form for use by internet radio services which do not require a licence under German broadcasting law but have to notify the service with any of the regulators.

The forms are available for download on the individual State Media Authorities' websites.

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## 2. Programme and infrastructure

- **TV and radio licence fees**

The Minister Presidents of the Laender on their meeting in late October agreed to make decisions about the television & radio fees by June 2010. Two models are envisaged of which one will probably be chosen: either the number of used devices will be basis of the calculation, or households and business premises will be considered as basis for the fee rate.

- **Digitisation**

Following the Bundestag, the Bundesrat in June agreed the use of the so-called "digital dividend" for providing rural areas with broadband internet. As a result, broadcasting has to give up part of the spectrum allocated to it. Who will cover the costs for shifting channels has not yet been cleared, nor has the question been resolved how to handle interferences in cable and terrestrial transmission resulting from the utilization of the broadcasting capacities by mobile services.

Also, the Bundesrat asked the commissions to prove the possibility of a law which should commit the telecommunications provider to reveal their current telecommunications infrastructure. This was done in order to fasten the broadband connections to and within rural areas until 2014.

In September 2009, the Regulatory Affairs Commission (ZAK) published the 5<sup>th</sup> digitisation report which refers to developments in digitisation regarding the different transmission routes. Following latest statistics the rate of digitisation reached 55 per cent in June 2009, and terrestrial TV was the first traditional mode of transmission to complete switchover.

The report including further results is available as pdf-file on the ALM website and can be accessed via

[http://www.alm.de/fileadmin/forschungsprojekte/GSDZ/Digitalisierungsbericht\\_2009/090904\\_Digitalisierungsbericht2009\\_Englisch\\_final.pdf](http://www.alm.de/fileadmin/forschungsprojekte/GSDZ/Digitalisierungsbericht_2009/090904_Digitalisierungsbericht2009_Englisch_final.pdf)

- **Digital radio**

The digitisation of radio suffered a severe setback as a result of the decision of the Commission assessing the financial needs of public-service broadcasting not to release the funds it had already approved for digital radio. The Commission argued that the economic viability of the projects is unclear and no agreement could be reached with commercial broadcasting concerning the digital future of radio. While the public-service broadcasters support digital radio, the commercial broadcasters are rather hesitant regarding the technology. Views whether radio should have its own digital transmission platform are also divided among the German regulators.

At the end of October, it came to a decision about the allocation of transmission capacities for nation-wide digital radio broadcasting. The public Deutschlandradio will receive a third of the available frequencies; the State Media Authorities receive two-thirds of the frequencies for distribution to the private digital radio providers.

- **Protection of minors and human dignity**

The draft law for blocking internet sites which would have empowered the Federal Criminal Authority under an agreement taken out with the five major internet providers to draw up a list of websites containing child pornography, requiring ISPs to show a stop sign to users attempting to access such sites was stopped by the Ministry of Economics which argued that it had to be presented to the European Commission since it affected rights of the information society.

The RTL format "Adult on Trial" (Erwachsen auf Probe) caused considerable controversy among regulators, advertisers and the interested public even before the first show was aired (as reported in the July 2009 edition of the DLM report). Concern related in particular to very young minors participating in the production; German labour and youth law do not contain any provisions regulating participation of children aged under three years in such work. The Commission for the Protection of Minors in the Media (KJM) while confirming that the provisions of the Interstate Treaty on the Protection of Minors were adhered to, also criticised the broadcaster for exploiting inexperienced minors in the interest of entertainment; in the opinion of the KJM, the format is irresponsible from an ethical and educational point of view. Various advertisers cancelled their bookings around the show.

RTL in June ended the court proceedings it had brought against the regulators in connection with its casting show "DSDS" and agreed to pay the fine imposed by the KJM for breaches in shows broadcast in July of last year. Part of the settlement includes acceptance of the guidelines drawn up by TV self-regulator, FSF, for casting shows and similar formats and RTL's agreement to present the show for analysis to the FSF prior to transmission.

The German Press Council has reprimanded Bild, the biggest German daily, for publishing a picture of pop star Michael Jackson being taken to hospital as a breach of the personal rights of the singer, arguing that legitimate public interest was no justification for infringing such rights. Other reprimands issued by the Press council related to Bild Online and other online portals.

- **Mergers, acquisitions, start-ups and insolvencies**

German pay-TV operator Premiere was re-launched under the name "Sky Deutschland" in July and was given a new price and package structure allowing consumers acquire daily transmissions of Bundesliga football via SMS, phone or the internet. News Corp has increased its share to 40 per cent.

The German Football League (DFL) has applied for a licence for an archive channel allowing it to exploit the 40.000 hours of TV coverage which have built up since 1963. The start of the new channel has not yet been decided.

News Corp and, separately, Springer have announced plans to introduce a pay system for contents downloaded from the internet, arguing that this would foster quality journalism. What form (subscription or pay per download) this will take has not yet been decided.

Liga Total, the internet football channel of Deutsche Telekom, got off to a rumpy start as transmission via mobile phones regularly broke down due to demand exceeding transmission capacities available. Since then, Deutsche Telekom has rediscovered DVB-H as a potential platform for mobile television. Being based on broadcasting technology, live streaming is easier to achieve for an unlimited number of users.

- **Court rulings**

The European Court of First Instance in early October dismissed the case brought by the Berlin regulator mabb against the Commission which had declared the subsidies granted by mabb in connection with the roll-out of DDT in Greater Berlin as illegal.

The German Football League (DFL) lost its appeal against the Federal. Cartel Office which had discontinued its investigation of the award procedure for the Bundesliga transmission rights for the next 4 seasons after they had been awarded by DFL to ARD and Premiere respectively last November. The Cartel Office had effectively prevented the planned new marketing model of

DFL and Sirius under which the summaries of the Saturday matches had been scheduled for 22.00 hour by mandating coverage in free TV before 20.00 hours. This position was only announced by the Cartel Office at a press conference. The court held that there was no preventive legal protection under cartel legislation which could only be resorted to for retroactive protection.

In May, the Federal Administrative Court rejected the order of the Federal Minister of the Interior to prohibit the Danish TV broadcaster Roj TV by suspending the immediate implementation of the order until the main proceedings have been concluded. The Minister had acted against two companies under Danish law whose activities it prohibited under the provisions of German law of associations on the grounds that Roj TV was distributing propaganda for the Kurdish party PKK. The court held that the German legislation on which the Minister had based its decision were probably not applicable for transfrontier television activities while the German Penal Code related to acts committed in Germany only. Furthermore, control of the provisions of the Directive was the competence of Denmark as the transmitting state rather than Germany as the receiving state. Further details: [www.bverfg.de](http://www.bverfg.de), BVerfG 6 VR 3.08 and BVerfG 6 BR 4.08.

The Federal Court of Justice has declared online video recorders illegal, ruling that services offered by providers of automated recordings of TV broadcasts across the internet violate the copyright agreements taken out between the broadcasters and the right holders of the content broadcast. The case concerned a provider of net-based personal video recorders which consumers can programme to record broadcasts. These are then stored by the provider for on-demand access by the consumer against pay. Sat.1 and RTL contested this system as an exploitation of their own activities, insisting on the right to decide themselves on transmission, re-transmission and storage (Az. I ZR 21 16/06).

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### 3. Institutions

- **Gemeinsame Geschäftsstelle**

The Association of State Media Authorities for Broadcasting in Germany (ALM) is currently setting up a common and central head office in Berlin. The head office will co-ordinate the work of the ALM and their organs (ZAK, GVK, DLM) from April 2010 onwards.

- **Commission for the Protection of Minors in the Media**

The Commission for the Protection of Minors in the Media (KJM) makes the results of their activities available to the public each three months in order to make their decisions more transparent and to contribute to an important field of public interest, the protection of minors.

The reports are available via the KJM-website at  
[http://www.kjm-online.de/public/kjm/index.php?show\\_1=154,58](http://www.kjm-online.de/public/kjm/index.php?show_1=154,58).

- **European Platform of Regulatory Authorities (EPRA)**

The 30<sup>th</sup> EPRA meeting was held from October 14-16 in Dresden, Germany and hosted by the Directors' Conference of the State Media Authorities (DLM) in cooperation with the regional Authority for Private Broadcasting and New Media from Saxony (SLM).

The next EPRA meeting will be held in Barcelona, Spain from May 12-14, 2010 at the invitation of the Catalonia Audiovisual Council (CAC).

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