

Communication and Media Policy

Directives of the VPRT - 2006/2007

Resolution of the General Meeting on 17th/18th May, 2006

SUMMARY

- **New Media Regulations must create legal certainty and security regarding planning**

The regulatory mechanisms from the analogue period only insufficiently take into account the current changes to the media landscape. The digital media world requires new Media Regulations which promote willingness to invest and growth, abolish competitive distortion and bring to an end the present state of legal uncertainty and insecurity regarding planning.

The core demands of the VPRT in that respect:

- Stopping the expansion of ARD and ZDF and making a clear distinction between private programmes offered and those offered under public law, financed by fees, in view of the intensity or density of regulations/funding
- Safeguarding fair competition and non-discriminatory access conditions for content providers to rights and infrastructures in relation to the vertically integrated telecommunications/media companies
- Increasing freedom of broadcasting, information and provision of services
- Increasing entrepreneurial responsibility and voluntary self-regulation by reducing state intervention to a minimum
- Co-ordinating and streamlining regulatory responsibilities
- Reducing the density of regulations governing private broadcasting and guaranteeing equal treatment with comparable media offers
- Developing a fair system of graduated density of regulations while reasonably weighting obligations and rights of the providers.

- I. **Analogue/digital changeover requires a binding bridging concept and fair general conditions for competition and access**

The VPRT supports a sustained and rapid digitalisation of the broadcasting transmission channels, as well as the development and extension of the infrastructures for disseminating electronic content.

The core demands of the VPRT in that respect:

- Market-orientated extension of the networks fit for the future and guaranteeing of fair competition of the network operators and infrastructures
- Agreeing a binding plan for changing over from analogue to digital, taking into account the special features related to the media genre concerned
- No erosion of analogue capacities at the expense of private broadcasting/media service providers
- Regulatory accompaniment of vertical integration and guaranteeing of non-discriminatory access of the independent media offers to networks and platforms
- No regulatory preference for platform operators over programme and content providers
- Reasonable acknowledgement of the value of content and creation of adequate models for remuneration for the digital world
- Priority access of broadcasting/comparable media services to digital terrestrial frequencies and redistribution of frequencies in the dual broadcasting system
- Integration of the various standards of digital dissemination and creation of a terminal and reception infrastructure that is fit for the future
- Guaranteeing advancement of digitalisation that is neutral technologically and in regard to networks
- Securing of comprehensive protection of content, as well as fair sharing in copyright proceeds

II. Advertising regulations must be modernised and made more flexible

Advertising serves to inform the consumers and is at the same time a significant economic factor. The broadcasting advertising regulations - in particular in the case of television - are unreasonably restrictive in relation to other media. Prohibitions on advertising and obsolete advertising regulations block important potential for innovation and growth.

The core demands of the VPRT in that respect:

- Modernisation and deregulation of the advertising regulations on both a European and national level



- Abolition of redundant advertising prohibitions and obsolete television advertising regulations on individual spots, advertising-block requirement and interval control systems
- **Reorganisation of the Dual Broadcasting Regulations is more than overdue**

Digitalisation increases the pressure to fundamentally reorganise the dual broadcasting system, which, over 20 years after its inception, is more than overdue.

The core demands of the VPRT in that respect:

- Specification of the Basic Provision Mandate under public law (qualitatively and quantitatively), predominantly focusing on the fulfilment of socially relevant functions
- Mandate-orientated restriction or reduction of public-law radio and TV offers, as well as offers accompanying programmes
- Restriction of public-law frequencies and transmission capacities to defined means of transmission and statutorily appointed programmes
- Abolition of advertising finance and exclusion of additional commercial offers
- Transparency and control of associated and subsidiary companies under public law through extension of the capacities of audit courts and the KEF, the Commission for Ascertaining Financial Requirements [*Kommission zur Ermittlung des Finanzbedarfs*]
- Cessation of purely commercial interests; privatisation of the public law operation of the transmission network



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Directives 2006/2007

Unabridged version

The aim of the activities of the VPRT is to promote the market development of electronically transmitted content, in particular broadcasting and media services, in the interests of its members. The tasks of the VPRT include the improvement of general economic conditions, the creation of legal certainty and security in regard to planning and a fair shaping of the legal framework, which promotes market development, as well as the promotion of development of the technical infrastructures in a way that is capable of meeting the demands of the future.

The member companies of the VPRT accept the challenges of digitalisation and the VPRT will, in the interests of its members, actively and aggressively participate in shaping the general conditions, based on the following Communication and Media Policy Directives.

I. New Media Regulations for private electronic media offers Legal certainty and security in regard to planning for the electronic media

Digitalisation, convergence and globalisation accelerate an integration of formerly separate areas of value creation (rights/ programme offer/ platform operation/ network operation). The vertical integration shifts the balance of power on the media market and has considerable repercussions on the competitive situation. Vertically integrated companies can distort competition considerably through cross-subsidies, pricing which is not in line with the market and discrimination concerning access to networks and platforms. The regulation is not adapted to this situation. Disadvantaging of non-integrated media companies in the acquisition of rights and in accessing the distribution channels will be the consequence.

The electronic media (broadcasting, media services and similar online media and telemedia) are still regulated by a great variety of different, partially overlapping sets of laws under various responsibilities at a regional, national and European level. The regulatory philosophies originate from the analogue world and do not, or only insufficiently, take into account the changes in the media landscape. Broadcasting in particular is regulated very restrictively in comparison to other electronic media.

The density of regulations differs considerably according to the respective allocation of offers as broadcasting or teleservice, in regard to which



terminological ambiguities and vague allocation criteria lead to grey areas. This leads to unjustifiable regulatory differences for comparable media offers, and, for the companies, to a permanent state of legal uncertainty and insecurity in regard to planning, with a negative impact upon willingness to invest and growth.

The demands of the VPRT for the creation of new Media Regulations run as follows:

1. Guidelines on the regulation for a new Media Regulations

- The legislators are called upon to create new Media Regulations for the digital media world, which differentiate between private programmes and offers, on the one hand, and programmes offered under public law, financed by fees, on the other hand. The financing by fees and the social mandate of the institutions under public law justify narrower regulation.
- Guideline on the regulation of private electronic media offers must be an increase in freedom in regard to broadcasting, information and the provision of services.
- The regulation must be geared towards the overall concept of the mature consumer.
- State intervention through regulation should be restricted to the necessary minimum.
- Entrepreneurial responsibility and the mechanisms of voluntary self-regulation must be increased.

2. En route to new Media Regulations

- The merging of broadcasting and telecommunications and vertical integration through the legal securing of fair competition and non-discriminatory access conditions (networks; remuneration) require to be taken into consideration. The VPRT demands that competition with fair chances be provided for.
- The general statutory provisions in the dual broadcasting system must be reorganised for both analogue and digital broadcasting within the meaning of fair competition, and clear limits set for the expansion of public law broadcasting.
- En route to new Media Regulations, a system of graduated density of regulations should be developed on a liberal basis, which places rights

and obligations of the various media offers in a fair relationship in accordance with their contribution to the formation of opinion.

- Social duties and obligations of providers of broadcasting and comparable media services must correspond with analogous rights, *inter alia* when accessing the distribution channels.
- The density of broadcasting regulations must be reduced, with the aim of promoting growth and innovation and providing equal treatment in the case of comparable media offers.
- The regulatory responsibilities must be co-ordinated and streamlined, regulatory overlap must be reduced. Moreover, co-ordination of the regions must be guaranteed, which also enables national problems to be solved.
- For German media companies development prospects must be opened up on both the national and international markets, in order to create equal opportunity in both European and international competition.

II. Digitalisation - Changeover from analogue to digital transmission Competition of the technical infrastructures Access to the technical infrastructures

The digitalisation of the media landscape can lead to expansions of the diversity of offers, as well as the freedom to choose and consumer access to the media offers. Digitalisation and convergence lead to media content being able to be offered in an increasingly interactive and individualised manner, as well as being available all the time and everywhere.

Through this, diverse opportunities are created for all providers of content transmitted electronically. The companies can either continue to develop their existing offers and business models or establish new offers and business models on the media market. The reverse side of the coin today is formed by risks which are still difficult to assess, such as possible loss of technical coverage when changing over from analogue to digital transmission, the foreseeable capacity bottlenecks, in particular with cable and terrestrial transmission, and also the altered structures of value creation and competition, *inter alia* through the market entry of vertically integrated companies.

The VPRT supports a sustained and rapid digitalisation of the broadcast distribution channels, as well as the development and expansion of new infrastructures for broadcasting electronic content. In order to preserve and implement the interests of its members, the VPRT makes the following demands:



1. Networks / distribution channels / platform operation

- The continued development of network and distribution channels may under no circumstances be carried out at the expense of the existing market participants from the field of broadcasting / media services.
- Fair and unimpeded competition of the network operators and network infrastructures must be guaranteed.
- The networks must be developed in a manner which is market-orientated, economically structured and fit for the future.
- In the event of bottlenecks in capacity, the principle of assuring variety (variety of opinion and offers) must prevail.
- Non-discriminatory access of providers of electronic media offers to the networks and platforms must be granted.
- The vertical integration (networks / platforms / rights / content) is to be accompanied by regulation, in order to ensure non-discriminatory access of independent media offers to the networks.
- Platform operators may not experience any better regulatory treatment, e.g. by being allocated bundled frequency broadcasting capacities to freely use further.
- The value of the content for the position of the networks and platforms in competition in relation to one another and in regard to the consumer is to be evaluated and remunerated reasonably.

2. Terrestrial broadcasting frequencies

- The terrestrial frequencies must be redistributed for digital use between public law institutions and private broadcasters. The maintenance of established frequency rights of the public law institutions with double and multiple provision, also in the analogue VHF range, as well as further demands of public law broadcasting in the digital world must be rejected.
- The priority of broadcasting and media services comparable to broadcasting (e.g. teleshopping) with their respective complete range of services when accessing digital terrestrial broadcasting frequencies must remain guaranteed. In this respect, the interests of the national and also countrywide, regional and local offers must be reasonably taken into consideration.



3. Standards / software / terminals / addressability

- The various standards of digital transmission must be extensively integrated and standardised.
- Non-discriminatory access of providers of electronic media offers to navigators/EPGs must be granted.
- The manufacturers of the terminals must take into account that the consumer must be provided with a reception infrastructure fit for the future, which is in a position to receive both free-to-air-offers, pay-offers and interactive media offers.
- The reception infrastructure must be equipped with interfaces in such a way that an interoperability between standards/software and various devices is guaranteed.
- The digital reception infrastructure must be addressable from the point of view of television and multimedia providers, in order to guarantee signal protection, refinance technical infrastructure costs, e.g. via an access fee, and enable the offering of new content and services via new business models. A prerequisite of this is a fundamental or transmission encryption of all digital distribution channels.

4. Changeover analogue / digital

- Economics and politics must work together to produce a binding plan for the changeover from analogue to digital, taking into account special features related to the media genre concerned, which distributes the opportunities and risks of the changeover evenly and not at the expense of individual private providers of broadcasting and comparable media services.
- The erosion of analogue capacities at the expense of private providers of broadcasting and comparable media services is rejected. Until a compromise for an analogue-digital changeover plan has been reached, a cessation of the erosion (moratorium) is demanded. The network operators are called upon to make available sufficient capacity for broadcasting and media services and not generate any artificial scarcity.
- Programme presenters and providers of media services expect the network operators to compromise concerning economic contractual conditions which are fair to both parties. This concerns both reasonable remuneration for the use of content and the adaptation of the fee models to the gains in capacity through digitalisation.

- Economics and politics must develop a communication concept which makes the advantages of digitalisation transparent to the consumer in a credible manner.
- Provisions for the promotion of digitalisation must be utilised in a way that is neutral, both technologically and in regard to the networks.

5. Copyright / data and consumer protection

- The copyright is to be designed in such a way that comprehensive protection of the content is granted and the content providers are assured a fair share in the copyright proceeds.
- New refinancing models may not be burdened with unjustified sanctions, e.g. of data and consumer protection, or unjustified charges, e.g. through alterations in tax law.

III. Deregulation of the advertising provisions / freedom of advertising

A significant foundation for the development of the social market economy, as well as the development of the diverse private media offers, is the freedom of advertising. Advertising enlivens competition, it serves to inform and orientate the consumers, it is a significant factor in both the economy and value creation, and it creates innovation and growth. The broadcasting advertising regulation is unreasonably restrictive in relation to other media. In addition, the danger exists that the advertising regulations will be tightened up for the new offers. Attempts of the EU Commission to implement the urgently required liberalisation of advertising threaten to fail. This would have a negative impact on both the process of digitalisation in Germany and Europe and the international competitiveness of the European media industry.

The VPRT demands:

- for the revision of the EU Television Directive, the abolition of meaningless regulations on individual spots, advertising-block requirement and interval control systems;
- a far-reaching modernisation and deregulation of advertising regulations at a European and national level for private electronic media in the interest of the providers and the consumers;
- the strict avoidance of reverse discrimination (against nationals and/or residents) through restrictive national laws on advertising regulation;
- the revocation of prohibitions on advertising, as well as the avoidance and abolition of advertising restrictions for products which can legally be bought commercially;

- the liberalisation of the provisions of sponsoring and further special forms of advertising.

IV. Reshaping of the Dual Broadcasting Regulations

The VPRT has been demanding right from the beginning of private broadcasting a concrete definition of the tasks, rights and obligations of public law broadcasting. Digitalisation increases the pressure to precisely formulate the mandate of the institutions under public law. The VPRT does not call into question the entitlement of broadcasting under public law. The fee-funded institutions under public law should provide socially relevant, social and community-orientated services in the digital media world as well, which the private media market cannot offer, or not to a sufficient extent.

However, the VPRT observes that the expansion into all new broadcasting channels and forms of offer regulated by the institutions under public law themselves cannot be reconciled with the mandate to provide a basic service and leads to considerable competitive distortions, at the expense of the market-financed media providers. The virtual autonomy of these institutions to regulate their mandate themselves is also at the expense of the feepayer and is not in conformity with the right of the consumer of informative self-determination, as well as the requirements of the German Federal Constitutional Court on the necessity of regulating organisation by the legislator for the protection of the feepayer. The VPRT is, in addition, of the opinion that the fee-funded or subsidised occupation of all electronic media markets by the public law broadcasting institutions or their subsidiaries and associated companies is not in conformity with European State Aid Law.

The VPRT demands a reshaping of the Dual Broadcasting Regulations in the digital media world, in which the role of fee-funded broadcasting is statutorily defined in accordance with the following key points:

- The mandate of public law broadcasting must be redefined in a concrete way, taking into account the diversity of the private media offers within the meaning of basic provision and a socially relevant function.
- The core of the mandate of public law broadcasting must be socially relevant functions, which are aimed at social integration. This excludes narrow target-group orientated / individualised offers; each public law programme offer will be required to correspond to the mandate for social integration.
- The mandate of the institutions under public law must be qualitatively described in regard to the content, as well as quantitatively determined. The programme elements information, education, culture and entertainment are to be weighted in accordance with the mandate.



- The mandate of the fee-funded institutions under public law is to be focused on a basic provision of the population with broadcasting programmes, and accompanying offers and the means of transmission which come into question for this are to be described both qualitatively and quantitatively by the legislator.
- The public law radio and television programmes are to be reduced to the necessary number to fulfil a clearly defined mandate.
- Frequencies and transmission capacities which are available for use by public law broadcasting must, in accordance with the defined means of transmission, be limited to the programmes and offers statutorily laid down.
- The financing of public law broadcasting is to be secured exclusively from fees, the amount of which is in proportion to its functional mandate. Additional commercial income must be excluded.
- The fee financing of all elements of the functional mandate – in particular education and culture – is to be secured independently of quota discussions.
- The associated and subsidiary companies of public law broadcasting institutions must be transparent in their structure and their funding clear to the audit courts and the Commission for the Ascertainment of Financial Requirements (KEF = *Kommission zur Ermittlung des Finanzbedarfs*).
- Associated and subsidiary companies which do not serve to fulfil the defined functional mandate must be ended. The operation of public law transmission networks is to be privatised.

Stuttgart, 17/18 May 2006