

LEGAL RAMIFICATIONS

The **Erich Pommer Institut** is engaged in research in the field of media law and media economics and passes on knowledge and skills by teaching university students and offering professional training for people who work in the media. We met EPI director **Prof. Dr. Oliver Castendyk**, formerly counsel of ProSiebenSat.1



Several media issues are currently being debated in Germany. One is the reform of the film subsidy law, the whole system was amended and revised two years ago. It is based in part on the new British model which offers incentives to film and produce and post-produce in the country. Secondly, there is the reform of the broadcasting law – Rundfunkstaatsvertrag – which is almost done - it is going to the European Commission for a final revision.

Is there anything in there that's controversial?

Oh yes. Basically it is amending the current broadcasting treaty in two respects: the mandate for public broadcasting in the digital realm and on the internet. Interestingly, it is not only the private broadcasters who are unhappy with the pubcasters' expansion into the internet. Even more dissatisfied are the direct competitors on the internet, like Spiegel online [English language international edition of the German news source] or the newspapers FAZ.de or

Welt.de. Even the German film producers are not happy: they had hoped a new market for their products would open up, and now it seems that the pubcasters have won this lobby battle and will go extensively into the online space. There are very few restrictions, the only one is the so-called 'Three-Step Test' which is modelled on the BBC - we will have to see whether this is a real barrier or not.

You are based near Berlin but your activities go much beyond Germany. What are the important issues in media law worldwide?

In private media law, which is basically copyright law, there is still the issue of piracy, internet piracy and piracy in general, and the role of copyright in the 21st century as a worldwide problem, how to balance the rights of the author and the media industry with the interests of the consumer and the people who want to inform themselves. In public media law, there are lots of problems. For example, in Saudia Arabia you are not allowed to advertise alcohol, so what about someone who has an internet site, a beer brewer for

▲ The EPI team with Oliver Castendyk back right

example, which is also available in Saudi Arabia. The internet has brought a lot of new problems in terms of regulation of media content, and you have to strike a balance between the interests of a certain nation state and the world community which is interested in the free flow of information. There is also a problem of capacity, e.g. capacity in cable networks, how to allocate certain frequencies worldwide for different usages – broadcasting, internet, mobile phone etc.

Media law is often an afterthought, when something has already gone wrong. Can the EPI help fix a problem, or do you provide guidelines to prevent mistakes?

Definitely the latter. We cannot be mediators or trouble-shooters because that's more the role of a lawyer. But the Institute can offer a neutral platform for debate, either in public at a conference, or in a more private environment for a debate off the record with people from the industry.

In today's world everything changes very fast. Technological

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changes in media production and distribution generate new legal questions and problems. On a practical level, how can the EPI help?

We help people by offering courses on the technical development, economic exploitation, and the legal ramifications. For example, on what's happening in the area of digital post-production, on mobile usage of films, on new technical models for bringing films to the consumer via the internet, on new economic models how to make money from that, and which legal problems arise with these new forms of usage.

What do your workshops on "Essential Legal Framework" cover?

The course on European co-production is always hugely popular, it goes into the complexities and intricacies of

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European co-production. Then there is one on digital developments, one on mediation and negotiation in the film business, and one on rights clearance which is a very complex issue especially for a film company. These courses are organised by our Institute and a local host, and also funded by the Media Programme of the EU.

Who comes to these workshops?

Basically younger film producers, but also older ones who want to know the latest. People from film subsidy institutions, lawyers. Participants come from all over Europe including East Europe, lots from Scandinavia and Ireland.

What's in your database called "Legal Basics"?

It contains legal texts which are relevant for media companies, such as copyright law, broadcasting law,

media advertising law, etc in all the European jurisdictions. We try to find English translations if they are available. It's a free offer on our web site.

Lastly, you mention consultation on your web site – what does that entail?

It means consultation on general matters. For example, one big film studio got a certain subsidy for building a studio complex and they wondered whether this is compatible with European subsidy law. We provided them with a legal opinion and advised them on how to design their application for local subsidies in such a way that it is compatible with European subsidy structure. We charge for this kind of service but less than a law firm probably.

Oliver Castendyk, thank you. ■

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