

# **Broadcasting Act for the Land of North Rhine-Westphalia (Rundfunkgesetz für das Land Nordrhein-Westfalen, LRG NW)**

In the revised version of 24 August 1995 (North Rhine-Westphalia Law Gazette 1995, page 994), as last amended by the Act of 10 February 1998 (North Rhine-Westphalia Law Gazette 1998, page 148)

Translation provided by the Inter Nationes and reproduced with kind permission.

*Introduction by Dr Norbert Schneider and Dr Wolfgang Hahn-Cremer*

## **Table of Contents**

### Section I General Provisions

Article 1 Scope

Article 2 Definitions

Article 3 Allocation of transmission capacities

Article 3a Entitlement to free short coverage on television

### Section II Licensing of nationwide programme services

Article 3b National broadcasting

### Section III Licensing of *Land*-wide programme services

Article 4 Licensing, application procedure

Article 5 Licensing conditions

Article 6 Licensing principles

Article 7 Priority licence

Article 8 Content of the licence

Article 9 Duty of co-operation

Article 10 Procedure in case of violation of the law; revocation; withdrawal

### Section IV Requirements upon the broadcaster

Article 11 Programming brief

Article 12 Programming principles

Article 13 Editorial staff

Article 14 Protection of human dignity; protection of young persons

Article 15 Responsibility

Article 15a Commissioners for the protection of young persons

Article 16 Duty to provide information; complaints

Article 17 Duty to record programmes; inspection

Article 18 Right of reply

Article 19 Right to make official statements; transmission time for independent third parties

Article 20 Duty to provide a service

### Section V Funding of programme services

Article 21 Types of funding  
Article 22 Advertising content; identification  
Article 22a Insertion of advertisements  
Article 22b Duration of advertising  
Article 22c Sponsorship  
Article 22d *Land* supervisory authority guidelines

#### Section VI Licensing of local broadcasting

Article 23 Applicable provisions  
Article 24 Principles of local broadcasting  
Article 25 Broadcasting associations  
Article 26 Composition of the broadcasting association  
Article 27 Members assembly; executive committee  
Article 28 Editor in chief  
Article 29 Operating company; agreement with the broadcasting association  
Article 30 Framework programme  
Article 31 Local transmission area

#### Section VII Broadcasts at local events, in institutions, in residential units and higher education establishments

Article 32 Broadcasts at local events and in institutions  
Article 33 Broadcasts in residential units  
Article 33a Broadcasts in higher education establishments

#### Section VIII Open channels

Article 34 Open channels in local broadcasting  
Article 35 Open channels in cable installations  
Article 36 Promotion of open channels

#### Section IX Retransmission of programme services in cable installations

Article 37 Applicable provisions  
Article 38 Principles of retransmission  
Article 39 Procedure  
Article 40 Prohibition  
Article 41 Order of precedence  
Article 42 Special provisions for small residential units

#### Section X Distribution services

Article 43 Broadcaster's distribution services  
Article 44 Transmission capacities for distribution services

#### Section XI Data Protection

Article 45 Applicable data protection rules  
Article 46 Processing of data for journalistic purposes  
Article 46a Data processing principles applicable to viewer subscriptions  
Article 46b Basic data

Article 47 Data processing in conjunction with subscription-based programmes

Article 48 Confidentiality

Article 49 Monitoring of data protection

Article 50 Ensuring data protection

## Section XII North Rhine-Westphalia *Land* broadcasting supervisory authority

Article 51 Inception; constituent bodies

Article 52 Tasks

Article 53 Incompatibility of offices and activities

Article 54 Pre-emptive termination of membership of the Broadcasting Commission

Article 55 Composition of the Broadcasting Commission; members' term of office

Article 56 Chairmanship and procedure in the Broadcasting Commission; reimbursement of costs

Article 57 Tasks of the Broadcasting Commission

Article 58 Broadcasting Commission committees

Article 59 Meetings of the Broadcasting Commission

Article 60 Tasks of the director

Article 61 Election; term of office; removal from office; exclusion of the director

Article 62 Budgetary and economic management

Article 63 Auditing of annual accounts

Article 64 Audit procedure

Article 65 Funding

Article 66 Legal supervision

Article 66a Broadcasting and line costs

## Section XIII Provisions on administrative fines; transitional and concluding provisions; pilot schemes

Article 67 Administrative offences

Article 68 Amendment to the WDR Act

Article 69 Transitional provisions

Article 70 Transitional provision concerning the right to short coverage in television

Article 71 Transitional provision concerning retransmission

Article 72 Pilot projects concerning new broadcasting techniques, programme services or broadcasting services

Article 73 Entry into force

---

### ***Introduction***

Germany's Basic Law and the Federal Constitutional Court's decisions on its Article 5 have established that responsibility for broadcasting lies with the state. Indeed, the early decisions taken by the Karlsruhe Court on public broadcasting legislation have had a considerable influence on the entire broadcasting system, creating monopolies in each of the *Länder* which continued to exist until the early 1980s. Since then the so-called "dual system" of public and private broadcasting has grown up, based on the Broadcasting Act for the *Land* of North-Rhine Westphalia (*Landesrundfunkgesetz Nordrhein-Westfalen – LRG NW*).

The evolution of private broadcasting started with a pilot project launched in Ludwigshafen, under which SAT.1, the first private television channel to transmit its programme nationwide via satellite, was created. In North-Rhine Westphalia, the *Land* Broadcasting Act prepared the

ground for private television and radio. It was also the basis for setting up the *Land* Broadcasting Supervisory Authority (*Landesanstalt für Rundfunk – LfR*), the independent regulatory authority created to monitor private broadcasting in North-Rhine Westphalia.

In organisational terms the supervisory authority is divided into two parts represented by its director and the Broadcasting Commission (*Rundfunkkommission*). One of its main responsibilities is the licensing of private TV and radio programmes. The Broadcasting Commission has forty-five members and defends public interests in broadcasting. Thirteen of its members are elected by the *Land* parliament under a system of proportional voting, the remaining thirty-two are seconded by social groups and institutions representing, for example, the churches, trades unions and journalists' professional associations. The Broadcasting Commission decides on policy matters, grants licences and monitors programming and advertising standards. The Supervisory Authority's director represents the Broadcasting Commission, whose decisions he prepares and implements.

Chapters 2 to 5 of the Broadcasting Act for North-Rhine Westphalia set out rules for private regional television. They cover procedures for obtaining terrestrial frequencies and satellite capacities, rules on ownership (to ensure a broad spread and avoid excessive concentration and cross-media ownership), licensing rules designed to promote competition among commercial programmes and programming obligations as regards accuracy, taste, decency and youth protection in broadcasting.

Section 12 of the Act sets out a number of programming principles such as the need to respect human dignity and to respect life, freedom and individuals' physical integrity. Crucial to private broadcasting are its rules on youth protection, advertising and sponsorship.

Section 10 of the Act contains provisions on the enforcement of licensing conditions and programming obligations, and regulates the withdrawal, revocation and suspension of licences.

It was under the terms of the 1987 Broadcasting Act that, on 1 April 1990, private local radio was launched in North-Rhine Westphalia. There are currently forty-five such stations on air. Special rules, set out in Part VI of the Broadcasting Act, apply to the organisation of local radio: each station must have its own local advisory board (*Veranstaltergemeinschaft*), which is responsible for planning. However, each must also have an operating company (*Betriebsgesellschaft*) to invest in equipment and staffing and sell the station's airtime. Yet the operating company is not authorised to influence programming. Co-operation between the local advisory board and the operating company is essential. Local newspapers may become majority shareholders in the operating companies, a facility which ensures that local newspapers are not eased out of local markets by the existence of local radio. This two-pillar system is quite unique; it is a hybrid consisting of a public service coupled with commercial radio.

The most innovative aspect in terms of citizen's participation in broadcasting is the Act's "fifteen per cent rule", which requires that fifteen per cent of locally produced daily programming is given over to citizen's groups and community organisations of a non-commercial nature.

Above and beyond private local broadcasting, the Act contains a section on open channels in cable installations. The Supervisory Authority has the authority to license non-commercial organisations to provide open channels, and individuals from a particular town or community in the transmission area of the cable network are permitted to make specific programmes on their own responsibility (section 35).

Section 37 of the Act sets out general standards applicable to the retransmission of licensed programme services from the other *Länder* and from countries elsewhere in Europe. European Union and Council of Europe rules stipulate that the Supervisory Authority must permit the retransmission of licensed European programme services via North-Rhine Westphalia's cable networks.

Sections 45 to 50 contain rules on data protection.

Section 72 pertains to pilot projects concerning digital radio and television and media services in North-Rhine Westphalia. Trials on digital audio broadcasting have already been completed, and those on digital television are scheduled for completion by 31 March 2000.

**Dr Norbert Schneider**

Director

Land Broadcasting Supervisory Authority

**Dr Wolfgang Hahn-Cremer**

Chairman

Broadcasting Commission

---

## **Section I General Provisions**

### **Article 1: Scope**

(1) This Act shall apply to:

1. the provision and transmission of programme services;
2. broadcasts at local events, in institutions, in residential units and higher education establishments;
3. the re-transmission of programme services in cable installations;

in North Rhine-Westphalia.

(2) Unless specifically stated otherwise, this Act shall not apply to Westdeutscher Rundfunk in Cologne.

(3) The Agreement between ZDF and the *Länder* (Article 3 of the Inter-State Agreement on Broadcasting in United Germany of 31 August 1991, North Rhine-Westphalia Law Gazette, page 408, as last amended by the Third Amendment to the Inter-State Agreement on Broadcasting of 26 November 1996, North Rhine-Westphalia Law Gazette, page 484) shall remain unaffected.

### **Article 2: Definitions**

(1) "Broadcasting" shall refer to the provision and transmission for the general public of presentations of all kinds of speech, sound and picture, using electromagnetic oscillations without junction lines or along or by means of a conductor. The definition includes presentations which are transmitted in encoded form or can be received for a special payment.

(2) "Local programmes" shall refer to programme services made, editorially structured or with an independent editorial composition in a geographically limited transmission area (section 31) and which is intended for that transmission area or a part thereof.

(3) "Full programmes" shall refer to programme services of varied content in which information, education, advice and entertainment constitute a major part of the overall output. They should broadcast for a minimum of five hours each day.

(4) "Specialised programmes" shall refer to programme services whose content is basically of the same kind.

(5) "Window programmes" shall refer to programme services of limited duration transmitted in a geographically limited transmission area (section 31) as part of a *Land*-wide service or for part of the geographically limited transmission area as part of a local programme.

(6) "Broadcast" shall refer to a coherent, self-contained and time-limited part of a programme service. A broadcast is also a single episode in a series where the series consists of self-contained yet coherent episodes.

(7) "Broadcast schedule" shall refer to a day-by-day overview of the breakdown of daily broadcast time according to the categories of information, education, advice and entertainment.

(8) Within the meaning of this Act:

1. "programme types" shall be television, radio;

2. "programme categories" shall be comprehensive programmes, specialist programmes and local programmes;

3. "transmission area" shall be the *Land* of North Rhine-Westphalia in the case of *Land* programmes; the area defined in section 31 for local programmes;

4. "transmission types" shall be wireless transmission by means of terrestrial transmitters, wireless transmission by satellite and conductor-relayed transmission by cable installations;

5. "transmission capacities" shall be frequencies and programmes.

(9) "Provider" shall refer to anyone who, having been licensed by the *Land* Broadcasting Supervisory authority (*Land* supervisory authority) for North Rhine-Westphalia, provides and transmits a radio or television programme.

(10) Where this Act associates specific legal consequences to the level of capital interest, non-cash capital contributions and services shall be included in the calculation.

### **Article 3 Allocation of transmission capacities**

(1) Allocation of transmission capacities available in the *Land* of North Rhine-Westphalia for programming use by private and public service broadcasters shall be regulated in accordance with the subsections hereinafter. This shall not apply to the transmission capacities referred to in section 3, subsection 2, third sentence, numbers 1 to 3 of the WDR Act in the version published on 31 March 1993 (North Rhine-Westphalia Law Gazette, page 158); subsection 7 shall remain unaffected.

(2) Where transmission capacities are available for broadcasting purposes in North Rhine-Westphalia, the *Land* government shall notify the public service broadcasters competent for North Rhine-Westphalia and the *Land* supervisory authority. The *Land* government shall endeavour to bring about an agreement between the competent public service broadcasters and the *Land* supervisory authority on an appropriate allocation of the available transmission capacities. Where an agreement is reached the *Land* government shall allocate the transmission capacities and shall notify the executive committee of the *Land* parliament of the outcome of the agreement.

(3) Where agreement is not reached pursuant to subsection 2 within three months after notification in accordance with the first sentence of subsection 2, the *Land* government shall decide on the allocation in accordance with subsections 4 and 5, due account being taken of submissions by the parties and after hearing the executive committee of the *Land* parliament. The *Land* government shall notify the executive committee of the *Land* parliament of the outcome of its decision.

(4) Transmission capacities required to ensure basic provision of public service broadcasting shall be allocated to public service broadcasters. Transmission capacities required to ensure the broadest possible geographical coverage of local broadcasting shall be allocated to the *Land* supervisory authority. Priority shall be given to ensuring basic provision in accordance with the first sentence.

(5) In other cases transmission capacities shall be allocated such as to ensure broadest equality in the development of public service and private broadcasting. This shall include the following considerations:

1. ensuring appropriate compliance with the statutory duties incumbent on public service broadcasting;
2. ensuring most comprehensive provision of the population with varied programming in private broadcasting
3. taking account of *Land*-wide, regional or local broadcasting needs;
4. filling gaps in residual broadcasting provision;
5. ensuring continued development of broadcasting by new broadcasting techniques.

(6) Public service broadcasters or the *Land* supervisory authority shall notify the *Land* government if after allocation the transmission capacities have not been utilised for at least twelve months. The *Land* supervisory authority may require broadcasters licensed in accordance with this Act to provide corresponding notifications. Following expiry of the time period referred to in the first sentence the *Land* government may rescind the allocation. The same shall apply to transmission capacities pursuant to section 3, subsection 2, third sentence, numbers 1 and 2 of the WDR Act which remain unused by WDR for more than twelve months. Subsections 2 to 5 shall apply to the allocation of transmission capacities.

(7) To improve provision of programme services transmission capacities allocated to public service broadcasters for programming use may, with their consent, or transmission capacities allocated to private broadcasters may, with the consent of the *Land* supervisory authority, be reallocated.

(8) For the purposes of disseminating radio and television programmes satellite channels and channels in cable installations allocated to the *Land* of North Rhine-Westphalia may also, upon request of the public service broadcaster competent for North Rhine-Westphalia or of the *Land* supervisory authority, be allocated to them. Subsections 2 to 5 shall apply *mutatis mutandis*.

(9) To ensure provision of frequencies, transmission capacities may be allocated for limited time periods.

(10) To improve use of existing transmission capacities or to create additional serviceable transmission capacities, the *Land* government is hereby empowered to enter into agreements with the governments of other *Länder* relating to frequency transfers and granting use of locations. Before the agreement is concluded consent shall be obtained from the public service broadcaster concerned and the *Land* supervisory authority.

### **Article 3a Entitlement to free short coverage on television**

(1) Every licensed television broadcaster in Europe shall be entitled to short coverage free of charge for his own broadcasting purposes of functions and events which are open to the public and of general interest. This shall include access, the right to make short, direct transmissions and recordings, the right to use the material to prepare a single report and the right to transmit under the conditions set out in sentence three hereafter and in sections 2 to 6. Other statutory provisions, in particular those protecting copyright and the right to personal privacy, shall remain unaffected. The first and second sentences shall not apply to churches and other religious communities or their institutions which carry out similar functions.

(2) Short coverage free of charge shall be restricted to news-type reporting which is appropriate to the occasion. The permissible duration shall be the length of time needed to convey the news content of the function or event. In the case of functions of a similar nature recurring at short, regular intervals the upper time limit shall normally be one and a half minutes. Where brief reports on functions of a similar nature are taken together their news content must be preserved in such cases also.

(3) The right to short coverage must be exercised in such a way that avoidable disturbances to functions or events do not occur. The organiser may restrict or exclude a transmission or recording where it can be assumed that the function would otherwise be jeopardised or the moral sensibilities of those present grossly offended. The right to short coverage is excluded where considerations of public safety and order prevail over the public interest in the information. The organiser's right to totally exclude the transmission or recording of a function shall otherwise remain unaffected.

(4) The organiser may demand payment of the admission fee usually charged in return for exercise of the right to short coverage; in addition, he must be reimbursed for any necessary expense incurred as a result of the exercise of that right. Before exercising the right to short coverage the television broadcaster shall notify the organiser at the latest ten days prior to the function's commencement. The latter shall notify the television broadcaster at the latest five days prior to the function's commencement whether sufficient space and technical facilities are available for the transmission or recording. Notice shall be given as soon as possible in the case of functions and events planned at short notice.

(5) If the available space and technical facilities are insufficient to cater for all who have notified their intention to attend, those television broadcasters who have made contractual agreements with the organiser or sponsor of the event shall be given preference. Furthermore, the organiser

or sponsor has the right to choose. In exercising that right those television broadcasters who can guarantee comprehensive coverage for the *Land* in which the function or event is being held shall be considered first. Television broadcasters able to exercise gratuitous short coverage rights are obliged to make the signal and the recording immediately available to those television broadcasters who could not be permitted to attend, in return for reimbursement of reasonable costs. If the organiser or sponsor of an event makes a contractual agreement with a broadcaster with regard to coverage he shall ensure that at least one other television broadcaster has an opportunity for a short coverage of the event.

(6) Parts of the material not used for the short coverage shall be destroyed at the latest three months after the end of the function or event; the organiser or sponsor of the event shall be notified of the destruction in writing. The time limit shall be interrupted as a result of the exercise of legitimate rights by third parties.

## **Section II Licensing of nationwide programme services**

### **Article 3b National broadcasting**

(1) The provisions of the Inter-State Agreement on Broadcasting (Article 1 of the Inter-State Agreement on Broadcasting in United Germany of 31 August 1991, North Rhine-Westphalia Law Gazette, page 408, as last amended by the Inter-State Agreement on Media Services of 27 June 1997, North Rhine-Westphalia Law Gazette, page 158) and section 4, section 5, subsections 1 and 2, sections 7, 8, 10, 13, 15, 16 to 18, 20, section 21, subsections 2 and 3 and section 67, subsection 1, numbers 13 to 17, 20, 22, 27 and 28 of this Act shall apply *mutatis mutandis* to nationwide television broadcasting.

(2) A licence for wireless transmission of a national television programme by means of terrestrial transmitter should be awarded only if a *Land*-wide window programme is included in the television programme. The organisation of the window programme shall also ensure the latter's funding by the broadcaster.

(3) The provisions of the Inter-State Agreement on Broadcasting and sections 4 to 11, 13, 15, 16 to 18, 20 and section 21, subsections 2 and 3 of this Act shall apply *mutatis mutandis* to national radio broadcasting.

## **Section III Licensing of *Land*-wide programme services**

### **Article 4 Licensing, application procedure**

(1) Anyone who wishes to provide and transmit programme services shall require a licence; it shall be issued, on written application, by the *Land* supervisory authority.

(2) The application may be made only once the *Land* supervisory authority has established that the transmission capacities are available for the relevant programme type and transmission area or are expected to become available within the next eighteen months. Their availability shall generally be ascertained every six months and shall be published in the Ministerial Journal for the *Land* of North Rhine-Westphalia.

(3) The period for applications shall be of at least two months' duration; the call for applications shall state when the application starts and ends. The application period may not be extended. Reinstatement in the *status quo ante* shall be excluded.

(4) Subsections 2 and 3 shall not apply to the licensing of satellite channels.

(5) Where and to the extent that media services are assimilated to programme services, suppliers of such services shall require a licence. Where the *Land* supervisory authority, in agreement with all *Land* media supervisory authorities, finds this to be the case, the service provider shall be required, within six months of being notified of such finding, to make application for a licence or to offer the media service in such a way that it shall not be assimilated to radio and television broadcasting, the choice being made by the media service supplier. Suppliers of media services shall be entitled to seek confirmation from the supervisory authority that their services are acceptable under broadcasting law.

## **Article 5 Licensing conditions**

(1) Licences may be awarded to physical persons, legal persons and permanent associations. They may be awarded a licence for broadcasting of a programme service only if their headquarters are located in a Member State of the European Union. They must have the economic and organisational resources to provide broadcasting in a way which respects recognised journalistic principles and as set out in their application. The physical persons, the members and the legal or statutory representatives of legal persons and associations:

1. must have unrestricted legal capacity, must not have lost their entitlement to take up public office by dint of judicial decision nor have forfeited their basic right of freedom of expression pursuant to Article 18 of the Basic Law;
2. must be capable of being pursued without restriction before the courts;
3. must not give cause, based on facts, to doubt that they will reliably perform their duties under this Act.

(2) Licences may not be awarded to:

1. legal persons created under public law except churches, other public service religious and ideological communities created under public law, the Jewish religious community and higher education establishments;
2. broadcasters whose members or legal or statutory representatives are also legal representatives of the excluded persons created under public law referred to in number 1 or persons in a superior working or service relationship to those persons created under public law referred to in number 1;
3. broadcasters whose members or legal or statutory representatives are also members of the German federal government or one of the *Land* governments;
4. political parties and electors' groups;
5. broadcasters whose members or legal or statutory representatives are also members of a body of a public service broadcaster or are persons in a working or service relationship, or position similar to that of employee, of these;
6. companies and associations dependent upon one or several of the excluded legal persons referred to in number 1 or political parties or electors' groups (section 17, Companies Act).

(3) The application must contain:

1. information regarding the envisaged programme type, programme category, programme duration, transmission area and transmission type;
2. a programme schedule showing how the applicant shall fulfil the requirements of the relevant programme category;
3. a description of the capital and voting relationships in relation to the provider and connected companies (section 15, Companies Act).

#### **Article 6 Licensing principles**

(1) The provider of *Land*-wide programmes shall provide appropriate safeguards – for example an advisory council for programming with effective influence on the television programme – to ensure that private broadcasting does not have a predominant influence on the formation of public opinion; such safeguards shall not be required if a predominant influence of one of the participants with a capital share or voting rights of more than fifty per cent is excluded by contract or statute. The provider must show with sufficient probability that his television programme will meet the requirements of the relevant programme category. Appropriate participation shall be ensured for interested parties providing cultural contributions.

(2) A licence for a joint full programme may also be awarded separately to two broadcasters for individual parts of a programme if there is sufficient probability to expect that those parts of the programme will together meet the requirements for a full programme.

(3) Licensing pursuant to subsection 2 shall require the broadcasters to have laid down in contractual form those parts of the programme which each will assume, broken down in the programme schedule according to type, extent and broadcasting time. Any influence on the part of the programming assumed by the other provider shall be mutually excluded by contract. The contractual agreement between the two broadcasters must stipulate that termination during the term of the contract is admissible only on the ground of serious breaches of the contract by the other provider or on similar serious grounds, the notice period being six months to the end of the calendar year.

(4) Within the framework of applicable legal provisions applicable to them, public service broadcasters may form part of a public broadcaster, holding in total not more than one third of the capital share and voting rights.

(5) A licence for wireless transmission of a *Land*-wide television programme by terrestrial transmitters may be awarded only if it is ensured that local television window programmes can be transmitted each day for up to two hours at a time fixed by the *Land* supervisory authority.

(6) A licence for transmission of a programme may be awarded to higher education establishments only if there is a functional link between the programme and the tasks which the higher education establishments are to fulfil.

#### **Article 7 Priority licence**

(1) Where several applicants fulfil the conditions set out in section 5, section 6, subsections 1 to 3 and 5, and where the available transmission capacity is insufficient for licences to be awarded to all applicants from the same programme type, the same transmission area and the same

transmission type, the state supervisory shall endeavour to bring about an agreement among the applicants.

(2) Where no agreement is reached within the time period established by the *Land* supervisory authority, licences shall be awarded as a priority to those applicants whose programmes can be expected to provide the greatest plurality of opinion. In assessing this, account shall be taken of the programme schedule, the composition (range of political, ideological and social forces and groups, extent of their capital share and voting rights) and of other organisational arrangements designed to ensure plurality of opinion; this shall include the extent to which the applicant allows his editorial staff to structure and take responsibility for programming as part of internal broadcasting freedoms.

## **Article 8 Content of the licence**

(1) The licence shall be awarded upon application by the *Land* supervisory authority in the form of a written notice for a minimum of four years and a maximum of ten years. The licence may be extended by five years insofar as there are no important grounds to support publishing a call for expressions of interest in the transmission capacities. The applicant may apply for extension of the licence at the earliest upon expiry of three quarters of the licence period. The licence shall not be transferable.

(2) The licence shall be awarded for the programme type, programme category, programme duration, programme schedule, transmission area, transmission type and transmission capacity. The licence can also be awarded for those satellite transmission capacities which have not been allocated to the *Land* supervisory authority by decision of the *Land* government pursuant to section 3. The licence referred to in the second sentence shall cover the use of other satellite transmission capacities within the meaning of the second sentence or those satellite transmission capacities allocated in proceedings pursuant to section 51 of the Inter-State Agreement on Broadcasting. In the case of section 6, subsections 2 and 3 the licence shall be awarded for a full programme provided jointly with a specific other provider and for a joint programme schedule (section 6, subsection 3, first sentence).

(3) Should the provider desire permanently to alter the established programme schedule or the programme duration, it shall notify the *Land* supervisory authority of such alternation at least one month in advance. The *Land* supervisory authority shall prohibit such alteration if it fails to guarantee plurality of opinion in at least the same way as the programme schedule and programme duration for which the licence was awarded and, in the case of full programmes, a significant share of information, education, advice and entertainment are not maintained.

(4) The following provisions shall apply to termination of contractual agreements relating to a joint full programme (section 6, subsections 2 and 3):

1. Where one of the two broadcasters wishes to terminate the agreements it shall notify the *Land* supervisory authority in advance. It shall endeavour to bring about a continuation of the agreements within the framework of statutory and contractual arrangements. Where notice to terminate is given before the *Land* supervisory authority has declared the failure of its efforts to reach an agreement (second sentence) the terminating party's licence shall expire at the time notice is given. The other provider's licence shall continue to be valid without the obligation to provide a full programme. He may adjust his programme schedule accordingly. Such adjustment shall be notified to the *Land* supervisory authority at the latest one month before being carried out. Subsection 3 shall not apply.

2. Where a broadcaster gives notice to terminate in accordance with number 1 on the grounds set out in section 6, subsection 3, third sentence, it shall simultaneously notify the *Land* supervisory authority of those grounds. The *Land* supervisory authority shall revoke the other broadcaster's licence at the time stipulated in section 6, subsection 3, third sentence, if one of the grounds for termination stated in that provision has been fulfilled. The licence of the broadcaster which gave notice to terminate shall continue to be valid without the obligation to provide a full programme. He may adjust his programme schedule accordingly. Such adjustment shall be notified to the *Land* supervisory authority at the latest one month before being carried out. Subsection 3 shall not apply.

### **Article 9 Duty of co-operation**

(1) Articles 21, 22 and 24 of the Inter-State Agreement on Broadcasting shall apply analogously insofar as required for the proceedings in accordance with this Section.

(2) The applicant shall be required to supply the *Land* supervisory authority upon request with the information listed in Article 6, paragraph 2 of European Convention on Transfrontier Television.

### **Article 10 Procedure in case of violation of the law; revocation; withdrawal**

(1) Where the *Land* supervisory authority ascertains a violation of the law it shall, after hearing the provider, instruct him to reverse such violation immediately or within an appropriate period of time or to abstain from such violation in future.

(2) Where the *Land* supervisory authority has already raised an objection to a violation in accordance with subsection 1, and if after such objection the same violation continues or a further violation is ascertained after the objection, in conjunction with the instruction pursuant to subsection 1, order that the licence be suspended for a specific time period not exceeding one month. The order may also refer to specific parts of the programme service. The *Land* supervisory authority shall decide upon the details by statute taking account of the seriousness and frequency of the violations.

(3) The *Land* supervisory authority may stipulate that objections pursuant to subsection 1 and final decisions in administrative court proceedings pursuant to section 67 shall be transmitted by the broadcaster concerned in his radio or television programme. In awareness of its duties, the *Land* supervisory authority shall decide upon the content and timing of the announcement of the objection pursuant to the first sentence.

(4) The licence shall be revoked if:

(a) one of the conditions pursuant to section 5, subsection 1, sentences 1 to 4, numbers 1 and 2 and section 6, subsection 4, in the case of local radio pursuant to section 25, subsection 1, and section 29, was not met;

(b) the provider obtained the licence by providing incorrect or incomplete information, by deception, duress or other unlawful means.

(5) The licence shall be withdrawn if:

(a) one of the conditions pursuant to section 5, subsection 1, sentences 1 to 4, numbers 1 and 2 and section 6, subsection 4, in the case of local radio pursuant to section 25, subsection 1, and

section 29 should subsequently not be met, if despite refusal of permission pursuant to section 8, subsection 3, second sentence or section 24, subsection 2, second sentence, the agreed programme schedule or programme duration were not observed;

(b) the programming service, for reasons which the broadcaster shall explain, is not begun at the stated time, is not taken up or continued within a time period fixed by the *Land* supervisory authority;

(c) the broadcaster, for reasons which he shall explain, does not comply with his duty to provide a service (section 20) even after a deadline has been set by the *Land* supervisory authority;

(d) the broadcaster has seriously violated his obligation under this law three times, on each occasion the *Land* supervisory authority has issued a decision stating that the violations were serious and has served the decisions on the provider.

(6) Where reservations arise pursuant to section 5, subsection 1, fourth sentence, number 3, concerning a legal or statutory representative, instead of taking measures pursuant to subsection 7, letter (a), the *Land* supervisory authority may require the broadcaster to remove the representative.

(7) The licence may be withdrawn if:

(a) the broadcaster has failed to comply with an order of the *Land* supervisory authority (subsection 2) within the time period established by the authority;

(b) the programme service fails to meet the prescribed duration even after notification and time periods have been set by the *Land* supervisory authority.

(8) The broadcaster shall not be compensated for any property disadvantage suffered as a result of justified measures pursuant to subsections 1 to 7.

(9) Sections 48 and 49 of the Administrative Procedures Act for North Rhine-Westphalia shall not apply.

## **Section IV Requirements upon the broadcaster**

### **Article 11 Programming brief**

Broadcasters shall transmit broadcasts as a medium and factor in the process of free formation of opinion as a matter concerning the general public; in this respect they shall perform a public duty. According to the relevant programme category, the programming services shall contribute to the provision of comprehensive information and the free formation of individual and public opinion, provide education, advice and entertainment and fulfil the cultural role of broadcasting. All full programmes shall also report on public events in North Rhine-Westphalia.

### **Article 12 Programming principles**

(1) All programme services shall be subject to the requirements of the constitution. The provisions of general legislation and those protecting personal honour shall be observed. Subliminal techniques may not be employed.

(2) Programme services shall respect the dignity of man and should contribute to strengthening respect for the life, freedom and bodily inviolability, faith and opinions of others. The moral, ideological and religious convictions of the population shall be respected as shall marriage and the family. Programme services should promote fellowship in united Germany, international understanding, discrimination-free togetherness and genuine equality between men and women, uphold peace and social equality, defend the democratic freedoms and be under a duty of truth. No programme may simply portray individual schools of thought one-sidedly or serve a party or group, pressure group, faith or ideology one-sidedly.

(3) Every full programme must, in fulfilling its programming brief, express the variety of opinions as broadly and comprehensively as possible. The most significant political, ideological and social forces and groups must be able to express themselves appropriately in every full programme. Account shall be taken of minority views. In its reporting, every full programme should provide an appropriate amount of time for dealing with controversial subjects which are of general interest.

(4) Current affairs and information programmes shall be consistent with recognised journalistic principles. They shall be independent and objective. The accuracy and source of news must be checked with the care demanded by the circumstances prior to its transmission. Commentary must be clearly separated from reporting and be identified as such by naming the author.

(5) Reports on any opinion surveys conducted by broadcasters must specifically indicate whether they are representative.

(6) In order to present the diversity of the German-speaking regions and of Europe as a whole and to promote European film and television productions, television broadcasters shall reserve the greater part of total time scheduled for the transmission of feature films, television plays, series, documentaries and comparable productions for European works, in accordance with European law.

(7) A significant proportion of full television programmes shall be own, commissioned and joint productions from the German-speaking regions and Europe as a whole. The same shall apply to specialised television programmes to the extent that their main focus allows.

### **Article 13 Editorial staff**

Within the framework of their contractual rights and duties editorial staff shall co-operate in fulfilling the tasks set out in sections 11 and 12. All editorial staff shall perform the programming tasks allotted to them within the framework of the broadcaster's overall responsibility and under their own journalistic responsibility. This shall be without effect to the rights of superior staff to issue instructions and to contractual agreements.

### **Article 14 Protection of human dignity; protection of young persons**

(1) Broadcasts shall be prohibited if they:

(a) arouse hatred against segments of the population or national, racial, religious or ethnic groups, encourage violent or arbitrary action against them or attack the human dignity of others by insulting segments of the population or any of the aforementioned groups or by maliciously degrading or defaming them (section 130, Criminal Code);

(b) depict cruel or otherwise inhumane acts of violence otherwise inhumane acts of violence against persons in such a way as to glorify or trivialise such acts of violence or depict their cruel or inhumane aspects in a manner which constitutes a violation of human dignity (section 131, Criminal Code);

(c) glorify war;

(d) are pornographic (section 184, Criminal Code);

(e) are obviously apt seriously to endanger the morals of children or adolescents;

(f) portray people who are dying or who are or were exposed to severe physical or mental suffering in a manner which constitutes a violation of human dignity and show a real occurrence without any predominant, legitimate interest in especially this form of reporting; consent is irrelevant.

(2) Broadcasts that are apt to endanger the physical, mental or emotional well-being of children or adolescents may not be transmitted unless the broadcaster takes steps to ensure, through the timing of the broadcast or in some other manner, that children or adolescents in the age groups concerned will not normally see or hear the programmes in question; the broadcaster may assume this to be the case for broadcasts between 11.00 p.m. and 6.00 a.m. In choosing the time to broadcast films which, under the Protection of Young Persons in Public Act are not to be made accessible to children and adolescents under the age of twelve, consideration shall be given to the well-being of younger children. Films which, under the Protection of Young Persons in Public Act, are not to be made accessible to children and adolescents under the age of 16 may only be broadcast between 10.00 p.m. and 6.00 a.m., and films not approved for adolescents under 18 only between 11.00 p.m. and 6.00 a.m.

(3) Broadcasts whose contents are completely or basically the same as publications included in the list pursuant to section 1 of the Dissemination of Publications Harmful to Young Persons Act shall be permissible only between 11.00 p.m. and 6.00 a.m., and only if the possible moral endangerment of children and adolescents, taking all circumstances into account, cannot be considered serious. The reasons for any such decision to broadcast shall be put down in writing before the transmission and, upon request, communicated to the *Land* supervisory authority.

(4) Programmes which, pursuant to the provisions of paragraphs 2 or 3, may not be broadcast at certain times may be announced with moving pictures only within those restricted times.

(5) The *Land* supervisory authority may either in guidelines or individual cases allow exceptions from the time limits under subsection 2, third sentence, and subsection 3, first sentence, and deviate from the classification under subsection 2, third sentence, and subsection 3, first sentence; in the case of subsection 2, third sentence, this applies especially to films whose classification is more than fifteen years old.

(6) In guidelines or individual cases the *Land* supervisory authority may also impose time limits with regard to films to which the Protection of Young Persons in Public Act does not apply or which, pursuant to the Act, are approved for adolescents under 16 years of age in order to allow for the special circumstances of films transmitted by television, especially television series.

(7) In making their decisions the state supervisory authorities shall take account of programme assessments by voluntary self-regulating bodies, especially where they concern protection for young persons.

(8) The *Land* supervisory authority, together with the other *Land* media supervisory authorities, shall issue guidelines for the implementation of section 14, subsections 1 to 4. Where the *Land* supervisory authority issues guidelines pursuant to subsections 5 and 6, it shall contact the other *Land* media supervisory authorities, the public service broadcasters forming the Association of German Public Service Broadcasting Corporations (ARD) and ZDF (German Television Channel II) and guarantee a mutual exchange of experiences in applying such guidelines.

### **Article 15 Responsibility**

(1) Each broadcaster must supply the *Land* supervisory authority with the name of a person who is responsible for the content of programme services. Where several responsible persons are named, the information shall also state which person is responsible for which part of the broadcasting programme. The broadcaster's duties shall remain unaffected.

(2) Only persons who fulfil the conditions set out in section 5, subsection 1, fourth sentence, numbers 1 to 3 and who reside in a Member State of the European Union may be named as responsible persons.

### **Article 15a Commissioners for the protection of young persons**

(1) All broadcasters of programmes which are transmitted *Land*-wide shall each designate a commissioner for the protection of young persons. The commissioner's task shall be to advise the person responsible for programming on all matters concerning protection of young persons. His opinion shall be adequately taken into account on all matters relating to the acquisition, production, scheduling and structuring of programmes.

(2) The person designated as commissioner shall have the expertise necessary for the fulfilment of his tasks. He shall not be under instructions in applying his professional expertise in the field of protecting young persons.

(3) The commissioners for the protection of young persons shall exchange information jointly on a regular basis with the youth protection commissioners of the public service broadcasters forming the Association of German Public Service Broadcasting Corporations (ARD) and of ZDF (German Television Channel II).

### **Article 16 Duty to provide information; complaints**

(1) The broadcaster shall be named at the beginning and end of the day's broadcasting programme. Moreover, the person responsible for the content of a programme shall be indicated at the end of the programme.

(2) Everyone shall have the right to contact the broadcaster and make suggestions regarding the broadcasting programme. Upon request, the *Land* supervisory authority shall provide the name and address of the broadcaster and of the person responsible for broadcasting content.

(3) The broadcaster shall, within one month, issue a written, reasoned decision concerning complaints alleging a violation of programming principles. If redress is not provided within the time period set out in the first sentence, the complainant may refer the matter to the *Land* supervisory authority within one month. In his decision on the complaint the broadcaster shall make reference to this facility and to the deadline period. Complaints pursuant to the first sentence shall be admissible only within three months of transmission of the broadcast.

(4) Where the complaint pursuant to subsection 3 also alleges a violation of data protection rules the broadcaster shall solicit the opinion of the *Land* supervisory authority's data protection officer before taking his decision. Subsection 3 shall apply to the procedure thereafter.

(5) Details of the procedure shall be decided in statutes by the *Land* supervisory authority.

### **Article 17 Duty to record programmes; inspection**

(1) The broadcaster shall produce and keep in storage a complete sound and image recording of broadcasts. In the case of broadcasts transmitted using a recording or a film, in derogation from the first sentence, either the recording or the film may be kept in storage or its future procurement may be guaranteed.

(2) The duties set out in subsection 1 shall end three months after the day of transmission. Where a complaint is made about a transmission within this time, the duties set out in subsection 1 shall end only once the complaint has finally been dealt with in a binding court decision, by a court settlement or in some other way.

(3) Within the time period stated in subsection 2 the *Land* supervisory authority may inspect recordings and films free of charge at any time or request that they be dispatched to them free of charge.

(4) Anyone who can demonstrate in writing that his rights have been affected may require access to inspect the broadcaster's recordings or films within the time period stated in subsection 2. Upon request copies, extracts or transcripts of the recording or film shall be dispatched to him in return for payment of costs incurred.

### **Article 18 Right of reply**

(1) The broadcaster is obliged to broadcast a statement from a person or body affected by a claim which the broadcaster has made in a transmission.

(2) There shall be no obligation to broadcast the reply if:

(a) the person or body concerned has no justified interest in the broadcast;

(b) the extent of the reply is inappropriate, in particular if it significantly exceeds the extent of the impugned part of the broadcast.

(3) The reply must be limited to statements of fact and must not contain matter which could lead to prosecution. It must be in written form and be signed by the person or body concerned or by the legal representative. An affected person or his legal representative may require broadcast of the reply only if it is forwarded to the broadcaster without delay, within a maximum of two months. The reply must indicate the transmission to which the complaint refers.

(4) The reply must be broadcast without delay within the same programme and the same programming group as the impugned claim and at the same time of day or, if that is not possible, be transmitted at a time in the broadcasting equivalent to the time at which the impugned transmission was made. The transmission shall be without interruptions and deletions.

(5) The reply shall be transmitted free of charge. This shall not apply if the reply concerns a claim made during an advertising broadcast.

(6) Enforcement of an unsuccessful claim for the right of reply is via the courts of ordinary jurisdiction. Upon request of the person or body concerned or of the representative the court may order the broadcaster to transmit a reply in the form set out in subsection 4. The provisions of the Code of Civil Procedure and on proceedings for issue of an interlocutory injunction shall apply *mutatis mutandis* to the proceedings. No evidence must be produced to the court to justify a risk to the claim. No proceedings shall be held on the merits.

(7) Subsections 1 to 6 shall not apply to truthful reports concerning public sittings of the European Parliament, the legislative bodies of the Federation, the *Länder* and the representative bodies of the communes, associations of communes nor of the courts.

### **Article 19 Right to make official statements; transmission time for independent third parties**

(1) Every broadcaster shall, without delay, grant reasonable transmission time to the German federal government and the highest *Land* authorities for the purpose of making official statements.

(2) Every broadcaster of a *Land*-wide full programme shall grant reasonable transmission time to parties or electors' groups during their participation in European Parliament elections, national general elections or elections to the North Rhine-Westphalian *Land* assembly for the purposes of party election broadcasts providing in North Rhine-Westphalia they have:

(a) one candidate on an electoral list, a *Land* list or *Land* reserve list; or

(b) candidates in one sixth of the constituencies for constituency elections.

All parties and electors' groups shall be treated equally; section 5, subsection 1, sentences 2 to 4 of the Parties Act shall apply *mutatis mutandis*. The second sentence shall apply *mutatis mutandis* to transmission time for party election broadcasts which a broadcaster grants without obligation under this Act or in addition to the requirement set out in the first sentence.

(3) A broadcaster may grant transmission time to a party or electors' group for election broadcasts while participating in local elections; in this case subsection 2, second sentence, shall apply *mutatis mutandis*.

(4) Every broadcaster of a *Land*-wide full programme shall, upon request, grant to the Protestant Churches, the Catholic Church and the Jewish Community, where they are not licensed broadcasters of a *Land*-wide broadcasting programme, reasonable transmission time for the broadcasting of acts of worship and festivals and of other religious broadcasts.

(5) In the cases of subsections 1 to 4 the broadcaster may require reimbursement of costs.

(6) Responsibility for a broadcast pursuant to subsections 1 to 4 lies with the person to whom the transmission time was granted.

(7) Without prejudice to subsection 6 the broadcaster shall refuse transmission of a broadcast pursuant to subsections 2 and 3 if its content obviously and seriously violates general statutes or does not serve the purpose of electioneering. A written complaint concerning the refusal may be filed with the *Land* supervisory authority within one month. The *Land* supervisory authority shall confirm the refusal or order that the broadcast shall be transmitted.

## **Article 20 Duty to provide a service**

- (1) Within the framework of available transmission capacities, every broadcaster shall guarantee viewers and listeners in their transmission area with full and technically equivalent services.
- (2) The *Land* supervisory authority may grant the broadcaster reasonable transitional periods.

## **Section V Funding of programme services**

### **Article 21 Types of funding**

- (1) Broadcasters may fund their programme services from advertising revenue, other revenue, in particular from viewer and listener fees (subscriptions and individual charges) and from their own resources.
- (2) Where programme services for which fees are charged also contain advertising, that fact shall be announced clearly in the payment conditions. In the case of broadcasts for which a separate charge is levied, the fact that a fee is payable and the level of the fee must be made clear before the transmission is received.
- (3) Where a programme service is also funded by donations the broadcaster shall be responsible for ensuring that the donor or donor association is unable to exert an influence on the channel. The broadcaster shall notify the *Land* supervisory authority of donations from a person or association which, alone or in total, exceed dm 20,000 in one calendar year, indicating the name and address of the donor or donor association and the total donation made. Details shall be decided by the *Land* supervisory authority by statute.

### **Article 22 Advertising content; identification**

- (1) Advertisements shall not be misleading and shall not prejudice the interests of consumers, nor may they encourage behaviour which endangers the health or safety of consumers or poses a threat to the environment. Advertisements also addressed to or using children or adolescents may not prejudice their interests or exploit their inexperience.
- (2) The advertisement or advertiser may not exercise any editorial influence over the content of programmes.
- (3) Advertisements must be clearly distinguishable as such. On television they must be clearly separated from other programme items by optical means and on sound radio by acoustic means.
- (4) Commercial broadcasts of greater length shall be allowed if their advertising character clearly predominates and advertising constitutes a substantial part of the broadcast. Commercial broadcasts must be announced as such when they begin and remain so distinguishable throughout. The first and second sentences shall apply *mutatis mutandis* to forms of advertisements within the meaning of section 22b, subsection 2.
- (5) Surreptitious advertising shall not be allowed. Surreptitious advertising is the reference to or presentation of goods, services, names, trademarks or activities of a manufacturer of goods or of a supplier of services in programmes when such reference or presentation serves advertising purposes and can mislead the general public as to the real purpose. A reference or presentation shall be regarded as serving advertising purposes especially where it is made for remuneration or other consideration.

(6) Television advertisements may not feature persons regularly presenting news or current affairs programmes.

(7) Advertisements of a political, ideological or religious nature shall not be allowed. Section 19, subsections 2 to 4 shall remain unaffected.

#### **Article 22a Insertion of advertisements**

(1) Broadcasts of religious services or children's programmes shall not be interrupted by advertisements.

(2) Television advertisements shall be inserted in blocks and between programmes; they may also be inserted during programmes subject to the conditions contained in paragraphs 3 and 5 provided that the integrity and character of the programmes are not prejudiced.

(3) In the case of television broadcasts made up of autonomous parts, sports broadcasts and broadcasts of similarly structured events and performances containing intervals, advertising shall be inserted only between those parts or during the intervals. In other broadcasts the time between two consecutive intervals within a broadcast must be at least twenty minutes. Subsections 4 and 5 shall remain unaffected.

(4) In derogation from the second sentence of subsection 3 works such as cinema and television, with the exception of television series or episodes, light entertainment programmes and documentaries lasting more than forty-five minutes, may be interrupted only once during each complete forty-five minute period. A further interruption is permitted if such broadcasts last at least twenty minutes longer than two or more complete forty-five minute periods.

(5) News broadcasts, political affairs programmes, documentaries and religious broadcasts on television may not be interrupted by advertising if their duration does not exceed thirty minutes. Where their duration is thirty minutes or more subsections 2 and 3 shall apply.

(6) Where advertisements in a television programme are specifically and frequently directed at audiences in another country which has ratified the European Convention on Transfrontier Television but which is not a member of the European Community, the television advertising rules in that country shall not be circumvented. The first sentence shall not apply where the provisions of this Act relating to advertising are stricter than the corresponding rules in the country concerned, nor where agreements in this area have been concluded with that country.

#### **Article 22b Duration of advertising**

(1) The total duration of advertising may not exceed twenty per cent of the daily broadcasting time; the duration of advertising clips may not exceed fifteen per cent of the daily broadcasting times. Advertising clips within any one hour period may not exceed twenty percent.

(2) Advertising such as direct marketing to the public for the sale, purchase, renting or leasing of products and the provision of services may not exceed one hour per day. Broadcasters may not act as contracting partners or representatives for the ordering of goods and services.

#### **Article 22c Sponsorship**

(1) Sponsorship is the contribution by a natural or legal person or an association of persons not engaged in broadcasting activities or in the production of audiovisual works to the direct or

indirect financing of a broadcast for the purpose of promoting the name, trademark, image, activities or services of the person concerned.

(2) In the case of wholly or partially sponsored programmes a clear and reasonably brief reference to the sponsor's financing must be made at the beginning and at the end of the programme; the reference may in this framework also be made in the form of moving images. In addition to or instead of the sponsor's name the company logo may be faded in.

(3) The content and scheduling of a sponsored programme shall not be influenced by the sponsor in such a way as to prejudice the broadcaster's responsibility and editorial independence.

(4) Sponsored programmes shall not encourage the sale, purchase, rent or lease of products or services of the sponsor or a third party, in particular by making special promotional references to them.

(5) Any person who is not allowed under this law or pursuant to other statutory provisions to advertise or who is mainly involved in the manufacture and sale of products or provides services the advertising of which is prohibited under this law or pursuant to other statutory provisions shall not sponsor programmes.

(6) News and current affairs programmes shall not be sponsored.

#### **Article 22d *Land* supervisory authority guidelines**

Together with the other media supervisory authorities, the *Land* supervisory authority shall issue guidelines for implementation of sections 22 to 22c. In so doing it shall make contacts with the public service broadcasters forming the Association of German Public Service Broadcasting Corporations (ARD) and ZDF (German Television Channel II) and guarantee a mutual exchange of experiences in applying such guidelines.

### **Section VI Licensing of local broadcasting**

#### **Article 23 Applicable provisions**

(1) Local programmes may be provided and transmitted only in accordance with the provisions of this Section. This shall be without prejudice to the provisions of the Act on Westdeutscher Rundfunk Cologne.

(2) Unless otherwise stated in this Section section 2, subsections 1, 2, 5 to 8, 9, first sentence, subsection 10, sections 3, 4, subsections 1 to 3, section 5, subsection 3, section 8, subsections 1 and 2, first sentence, subsection 3, sections 9 to 11, sentences 1 and 2, section 12, subsections 1, 2, 4 and 5, sections 13 to 15, 16 to 18, 19, subsections 3, 5 to 7, sections 20 to 22d shall apply to local programmes.

#### **Article 24 Principles of local broadcasting**

(1) Local broadcasting shall be required to serve the common good. Local programmes must present public events in the transmission area and their programming contain a substantial share of information, education, advice and entertainment. They should promote journalistic competition. They may not be aimed solely at individual target groups and should be designed so as to be accepted by listeners and viewers. Every local programme must present as broadly and comprehensively as possible the full range of opinion. The major political, ideological and social

forces and groups in the transmission area must be able to express their views in every local programme. Every local programme must provide sufficient reporting time for coverage of controversial subjects which are of general interest. The local programmes should promote genuine equality between men and women and take sufficient account of women's daily lives and views.

(2) A local radio programme (section 2, subsection 2) must have a minimum daily broadcast time of eight hours, a local television programme (section 2, subsection 2) a minimum of thirty minutes. If an economically viable local radio programme cannot ensure a daily broadcast time of eight hours, the *Land* supervisory authority may, upon request:

(a) establish an alternative transmission area pursuant to section 31, subsection 1, third sentence;

(b) permit a minimum daily broadcast time of five hours;

(c) permit, for a limited period, a minimum daily broadcast time of three hours on Saturdays, Sundays and statutory holidays (section 2, subsection 1, Holidays Act for North Rhine-Westphalia).

To achieve the objective set out in the first sentence, the *Land* supervisory authority may, upon request, approve several of the measures set out in the first sentence, letters (a) to (c). Broadcasting associations may enter into agreements concerning exchanges of programmes. Details shall be decided by the *Land* supervisory authority by statute.

(3) Every broadcasting association (sections 25, 26) shall immediately grant the highest *Land* authorities, the districts and the municipalities in its transmission area reasonable broadcasting time to make official announcements. Every broadcasting association shall, upon their request, grant the Protestant Churches, the Catholic Church and the Jewish Community reasonable transmission time for the broadcasting of acts of worship and religious festivals and of other religious broadcasts. Section 19, subsections 3, 5 and 6 shall apply *mutatis mutandis*.

(4) Every broadcasting association must include in its daily programme, in accordance with the programme schedule, up to fifteen per cent of the broadcasting time, with a minimum of sixty minutes, and a maximum however of two hours each day, programme contributions from groups, particularly with cultural aims:

1. which do not have the authorisation referred to in section 26, subsection 1, first sentence;

2. the purpose of which is not geared towards a business activity;

3. which comply with the conditions set out in section 5, subsection 1, fourth sentence, numbers 1 and 2;

4. which are not excluded pursuant to section 5, subsection 2, from filing applications; this shall not apply to theatres, schools, adult education institutes and other cultural institutions;

5. the members of which reside in the transmission area (section 31).

Programme contributions within the meaning of this provisions shall refer to contributions made and independently structured by those groups active in the transmission area (section 31) intended solely for broadcast within that transmission area or a part thereof. Transmission times for the programme contributions referred to in the first sentence should be directly linked to the

transmission times set out in the programme schedule for local editorial commentaries if those concerned are unable to agree otherwise. Programme contributions within the meaning of the first sentence on the days referred to in subsection 2, second sentence, letter (c) should be transmitted at their usual transmission time during the week if those concerned are unable to agree otherwise. Members of a broadcasting association or persons in a working or service relationship, or position similar to that of employee, to them may not participate in the making of programme contributions pursuant to the second sentence. Unused transmission time may be used by the broadcasting association itself. It must provide groups with production assistance if the groups so request. Section 35, subsection 7, number 2, shall apply *mutatis mutandis*. Further details shall be decided by the *Land* supervisory authority by statute in application, *mutatis mutandis*, of the principles set out in section 35, subsection 8, numbers 2, 3 and 4. The programme contributions may not contain advertising. Sponsored programme contributions are wholly forbidden. Exceptions shall be decided by the *Land* supervisory authority.

(5) The broadcasting association shall be responsible for the content of programme contributions pursuant to subsection 4, first sentence. It shall reject programme contributions which fail to comply with the requirements set out in subsection 4 and the other provisions of this Act. Details shall be decided by the *Land* supervisory authority by statute.

(6) The broadcasting association may require compensation for expenses incurred in granting production assistance (studio facilities including advice needed to run them) pursuant to subsection 4. In so doing all groups must receive equal treatment; the broadcasting association shall draw up a schedule of charges. Details shall be decided by the *Land* supervisory authority by statute.

(7) Where there is a difference of opinion a decision concerning the cases set out in subsections 4 to 6 shall be taken by the *Land* supervisory authority.

## **Article 25 Broadcasting associations**

(1) A license shall be awarded to a broadcasting association only if its composition and statute corresponds to the provisions of sections 26 to 28. It must appear in the register of associations as an association [Verein] as defined in section 21 of the Civil Code. The statute must stipulate that the sole purpose of the association is the provision and transmission of local broadcasting and the conclusion of agreements concerning framework programmes (section 30). The association is the producer of the programme and bears sole responsibility for it. To perform its statutory tasks it shall avail itself of an operating company (section 29), which may not influence the content or structure of the programme.

(2) A licence for a local programme service shall also include authorisation to transmit window programmes.

(3) The broadcasting association shall draw up an editorial statute in agreement with its editorial staff.

(4) For every calendar year the broadcasting association shall draw up a staffing plan and a business plan which shall include all anticipated revenues and expenditures; anticipated expenditure should not exceed the revenue. The principles of thrift and sound economics shall be observed in so doing. The broadcasting association shall be bound by the estimates contained in the staffing plan and the business plan. The broadcasting association's board shall draw up the draft plans in agreement with the operating company and present the drafts, together with unresolved objections from the operating company, for a decision. Both plans shall require

approval of the operating company. The operating company shall be required to provide the broadcasting association in good time with all necessary information referred to in the first sentence (particularly annual accounts and agreements between the operating company and third parties by the latter uses in performance of its duties). The broadcasting association may make those documents available to the *Land* supervisory authority to obtain advice in respect of its rights and duties under this Act.

(5) The operating company shall be required to notify the broadcasting association without delay of changes in its capital and voting rights. The broadcasting association shall be required to notify the *Land* supervisory authority without delay of changes to the capital and voting rights within the operating company and its associated companies (section 15, Companies Act) and of changes to the agreement pursuant to section 29, subsections 1 and 2.

## **Article 26 Composition of the broadcasting association**

(1) The broadcasting association must have been founded by at least eight physical persons appointed by the following bodies:

1. the Protestant Churches;
2. the Catholic Church;
3. the Jewish Community;
4. the district council, council of an independent town [*kreisfreie Stadt*] or assembly of members pursuant to subsection 2, number 2, second sentence;
5. the leading trades union organisation with the largest number of members in the transmission area;
6. the employers' associations;
7. the district or independent town's youth circle;
8. the district or independent town's sports federation;
9. welfare associations (workers' welfare association, Caritas, "Deutscher Paritätischer Wohlfahrtsverband", the German Red Cross, "Diakonisches Werk");
10. associations recognised under section 29, subsection 2, of the Federal Nature Protection Act;
11. the North Rhine-Westphalia Consumer Association, the *Land* Working Party of Consumer Associations;
12. publishers of daily newspapers with local editions in the transmission area;
13. the North Rhine-Westphalia district association of the trade union for media, print, paper, journalism and art workers "IG Medien", the Expert Group on Journalism, the German Association of Journalists, the North Rhine-Westphalia *Land* association of the Trades Union of Journalists.

Anyone issuing invitations to a founding meeting must notify all those bodies stipulated in the first sentence of the time and place of the founding meeting two months prior to the planned date. Persons whom those bodies have indicated to the host as their candidates for founder members shall be invited in writing to attend the founding meeting. The founding statute must be approved unanimously by those persons stipulated in the first sentence present at the founding meeting. Should such a decision not be forthcoming, the *Land* supervisory authority shall endeavour to bring about an agreement. Not earlier than two months after the founding meeting at least three quarters of the persons stipulated in the first sentence present at the meeting may approve the statute. All persons stipulated in the first sentence must be invited in writing to such a meeting two weeks in advance. The statute must state that those persons who did not approve the statute shall be accepted into the association upon request.

(2) The following shall apply to the selection of the members referred to in subsection 1, first sentence:

1. In the cases of subsection 1, first sentence, numbers 1 to 3, selection shall be according to the provisions applicable to the churches and religious communities referred to.

2. Where the transmission area covers only one district or independent town, selection pursuant to subsection 1, first sentence, number 4, shall be effected by the district council or the council of the independent town. Where, in addition to the district or independent town, the transmission area also covers further districts, independent towns or district counties [*kreisangehörige Gemeinden*], selection shall be effected by a meeting of representatives. The meeting of representatives shall be competent to vote if two thirds of its members are present. Meetings of representatives shall be convened and chaired by the *Land* supervisory authority. The number of representatives shall be calculated on the basis of the population count applied to the most recent municipal election. The local authorities referred to in the second sentence shall second one representative per ten thousand inhabitants. If not all counties in a district fall within the transmission area, the representatives shall not be seconded by the district but by the counties belonging to the district. The district counties shall second at least two members to the representatives meeting; sentence 6 shall otherwise apply *mutatis mutandis*. These members are elected by the local authorities by a system based on proportional voting (d'Hondt system). The selection pursuant to subsection 1, first sentence, number 4, may also be carried out by written circular. Details shall be decided by the *Land* supervisory authority by statute. If the membership of one of the members selected according to subsection 1, first sentence, number 4, should end, the participating county or district councils shall, upon a proposal from the sector or group to which the departing member belonged at the time of his selection, select a person to replace the departing member.

3. In the cases of subsection 1, first sentence, numbers 5 to 13, the selection shall be effected by that part of the body referred to in subsection 1, first sentence, which is responsible for the entire transmission area. Where several such parts meet the requirement set out in the first sentence, that which is at the lowest level shall be responsible.

4. The bodies referred to in subsection 1, first sentence, numbers 1 to 3 and 5 to 13 may each select one member. The bodies referred to in subsection 1, first sentence, number 4, shall, in derogation herefrom, select two members; they shall be elected by a system based on proportional voting (d'Hondt system).

5. Insofar as subsection 1, first sentence, numbers 1 to 3 and 5 to 13 each refer to several bodies, only one member may be selected by them jointly.

6. The statute must stipulate that those bodies referred to in the first sentence of subsection 1 which have not selected a founding member may, upon request, select one physical person, in the case of the second sentence of number 4 two physical persons as members of the association. After its foundation the association must without delay request those bodies to carry out the selection. Where no selection has been made within two months of such request, acceptance shall require a majority of two thirds of the members selected according to the first sentence of subsection 1.

7. The selection period may be limited to five years.

(3) The association must have as members one further physical person each from the areas of culture and the arts, education and science, from the community of foreign citizens as well as one member from a charitable association included in the register of associations whose purpose according to the statute is to promote local broadcasting in the transmission area. The statute must stipulate that the members selected by the bodies referred to in the first sentence of subsection 1 shall vote by a two thirds majority on acceptance of those members and that such decision can only be taken only once the procedure set out in subsection 2, number 6 has been concluded.

(4) Moreover, the statute must stipulate that one representative of the operating company may attend meetings of the members' assembly and of the executive committee.

(5) The statute must also stipulate that the members of the association pursuant to subsections 1 and 3 may accept up to four more physical persons as members. The decision to include such persons shall require a two thirds majority of the members referred to in subsections 1 and 3.

(6) The statute must stipulate that the association shall have a maximum of twenty-two members. Bodies selecting several members must ensure that at least half of their selected members are women. Otherwise, in the case of subsection 2, number 7, a woman shall be selected as member for each second period. The requirements set out in the second and third sentences shall not apply only if, given the composition of a specific organisation or group, it is unable to second women on a regular basis or in an individual case.

(7) Every member of the association and of the executive committee:

1. must comply with the conditions laid down in section 5, subsection 1, fourth sentence, numbers 1 to 3;

2. must dwell or have his place of ordinary residence in the transmission area;

3. must not be one of those persons as a result of whom broadcasters are excluded from obtaining a licence pursuant to section 5, subsection 2, numbers 2, 3 and 5;

The members of the association are not required to be members of the bodies have which selected them (first sentence of subsection 1).

(8) The statute must stipulate that membership of one of the members selected according to the first sentence of subsection 1 shall end if:

(a) that member has left the body or organisation which selected it and of which it was a member at that time;

(b) the time period pursuant to subsection 2, number 7, has expired;

(c) the licence has expired or if the licence is revoked or withdrawn. Sentence 1, letter (c) shall also apply to members pursuant to subsections 3 and 5.

The statute must also stipulate that membership shall continue in the cases referred to in the first and second sentences if, prior to the time at which membership ceased under the first sentence of subsection 1, membership is confirmed by the bodies referred to there and, in the case of subsections 3 and 5, confirmation obtains under the provisions referred to there.

(9) Where a member leaves the association, his successor shall be selected according to the provisions set out in subsections 1 to 3 and 5.

(10) Section 63, subsection 2, section 113, subsection 1, second and third sentences of the District Code for the *Land* of North Rhine-Westphalia and section 26, subsection 4, fourth and fifth sentences of the Counties Code for the *Land* of North Rhine-Westphalia shall not be applied to members pursuant to subsection 1, first sentence, number 4.

#### **Article 27 Members assembly; executive committee**

(1) The statute must stipulate that the members assembly shall discuss and vote on all issues which are of fundamental importance to the broadcasting association.

(2) The members assembly must be charged by the statute in particular with the following tasks:

1. to vote on the statute;
2. to elect and remove the executive committee from office;
3. to decide on the appointment and dismissal of managerial staff and all editorial staff;
4. to decide on the annual business and staffing plans;
5. to approve the conclusion of collective wage agreements;
6. to decide on issues of principle with respect to programme planning and broadcasting technology;
7. to monitor compliance with the broadcasting brief, compliance with the programming principles and the principles applicable to local broadcasting;
8. to draft and amend the programme schedule;
9. to alter the programme duration;
10. to conclude, amend and terminate the agreement with the operating company;
11. to draft the editorial statute;
12. to decide on a framework programme;
13. to dissolve the association.

The statute may stipulate that the members assembly may, by a decision taken by a two-thirds majority of all members, transfer to the executive committee the tasks set out in the first sentence, numbers 3 and 5 to 9 and 11, but that it can at any time reinstate its own responsibility for them by a majority vote of its members.

(3) The statute must stipulate that the members assembly shall be competent to take decisions provided that half the members are present and that all members were invited in accordance with the detail of the statute that otherwise all members shall again be invited to attend within an appropriate period of time and that at the subsequent meeting the members assembly shall be competent to take decisions irrespective of the number of members present.

(4) The statute must include the following rule concerning decisions of the members assembly:

1. Each member shall have one vote.

2. Insofar as nothing else is stipulated in number 3, decisions shall be taken by at least the majority of votes of members present.

3. Decisions of the members assembly concerning the appointment and dismissal of the editor in chief, on the conclusion, amendment and termination of the agreement with the operating company, on the election and removal of the executive committee and on the transfer of the tasks referred to in the second sentence of subsection 2 shall require a majority of at least two thirds of the members present, though of at least of a majority of all members.

Decisions pursuant to the first sentence, number 3, with the exception of the election and removal of the executive committee, may be taken only after conclusion of the procedure pursuant to section 26, subsection 2, number 6 and subsection 3.

(5) The statute must stipulate that the executive committee shall consist of three persons.

(6) The statute must furthermore stipulate that the executive committee shall in particular be charged with the task of:

1. representing the associations before the courts and out of court;

2. to draw up the draft annual business and staffing plans; and

3. to prepare the members assembly.

### **Article 28 Editor in chief**

(1) The broadcasting association must charge one employee with editorial management (editor in chief).

(2) The appointment and dismissal of the editor in chief shall require the consent of the management company. The latter may withhold its consent only on grounds related to the journalistic stance of the editor in chief.

(3) The statute of the broadcasting company must stipulate that the editor in chief may, as part of the staffing plan, make proposals concerning the appointment and dismissal of editorial staff and that editorial staff may neither be appointed nor dismissed if the editor in chief objects.

## **Article 29 Operating company; agreement with the broadcasting association**

(1) The licence may be awarded only if the broadcasting association can provide a contractual agreement with an operating company for the period applied for which it shall use to fulfil its duties under the law.

(2) The agreement must contain a commitment by the broadcasting association and the operating company that the agreement may be terminated pursuant to subsection 7 only with six months' notice to the end of the calendar year. The agreement must contain a commitment by the broadcasting association to accept advertising only from the operating company. It must contain a commitment by the operating company, for the period of the licence:

1. to obtain and make available to the broadcasting association the technical resources required to produce and broadcast the local programme;
2. to provide the broadcasting association, to an extent set out in the contract, the means required to assume its legally defined tasks and its tasks under the agreement; this shall also encompass those means to enable organisational tasks to be performed on a full or part-time basis within the broadcasting association;
3. to provide the broadcasting association with the information required (section 25, subsection 4, sixth sentence) to perform its legally defined tasks and its tasks under the agreement;
4. on behalf of the broadcasting association to provide those groups referred to in section 24, subsection 4, first sentence, with production assistance; in so doing all groups must receive equal treatment;
5. to permit a representative of the broadcasting association to attend meetings of the operating company's constituent bodies;
6. to enter into an agreement with only one broadcasting association.

(3) The contractual agreements shall be presented together with the broadcasting association's licence application and the necessary information provided to demonstrate that the operating company has the economic and organisational resources to ensure compliance with the agreements entered into with the broadcasting association.

(4) The broadcasting association must furnish proof that it has concluded the contractual agreement with an operating company which leads to the expectation that, for the purposes of ensuring free and diverse press, it takes appropriate account of the interests of all daily newspapers which have local editions appearing in the transmission area (section 31). Companies with one or more daily newspapers may not hold more than seventy-five per cent of the operating company's capital and voting rights; where several daily newspapers with local editions appear in the transmission area (section 31), in case of doubt they must be represented in accordance with their market share. Dependent or dominating companies or concerns as defined by the Companies Act shall have shares assimilated to them in accordance with the holdings of their associated companies.

(5) Where there is no operating company which fulfils the requirements of subsection 4, the *Land* supervisory authority shall decide, account being given to the largest possible local media spread, whether the requirement set out in the first sentence of subsection 4 can be dispensed with. The first sentence of subsection 4 shall not be applied if the contractual agreement is not

concluded because operating companies which fulfil the requirements of subsection 4 impose conditions exceeding the interests set out in that place. Where more than one radio programme or more than one television programme be licensed in a single transmission area (section 31), the first sentence of subsection 4 shall apply only to the programme with the greatest technical coverage; in the case of several programmes having the same technical coverage the *Land* supervisory authority shall decide to which programme the first sentence of subsection 4 applies.

(6) Until such time as the broadcasting company is licensed, districts and associations of districts as well as companies and associations in which one or several districts or associations of districts participate (communal sponsors) shall have the right to require participation in the operating company totalling not more than twenty-five per cent of the capital and voting rights. Sections 107, 108 of the District Code for North Rhine-Westphalia shall not apply.

(7) The following provisions shall apply to termination of the agreement between the broadcasting association and the operating company:

1. Where the broadcasting association or the operating company wishes to terminate the agreement it shall notify the *Land* supervisory authority in advance. The *Land* supervisory authority shall endeavour to bring about a continuation of the agreement within the framework of statutory and contractual arrangements. Where notice to terminate is given before the *Land* supervisory authority has declared the failure of its efforts to reach an agreement (second sentence) the broadcasting association's licence shall expire at the time notice is given; where the operating company terminates the agreement, the first sentence of subsection 4 shall not apply to the new agreement which the broadcasting association shall be required to present.

2. Where the broadcasting association, in observance of number 1, terminates the agreement with the operating company as a result of a serious breach of the agreement, the *Land* supervisory authority shall decide within two months whether sentence one of subsection 4 shall be applicable to the new agreement which the broadcasting association shall be required to present. In so doing it shall weigh up the significance and seriousness of the breach of contract and the interests referred to in the first sentence of subsection 4. The new agreement shall be presented at the latest three months after the *Land* supervisory authority's decision (first sentence) has been taken; otherwise the *Land* supervisory authority shall revoke the licence.

3. Where the operating company, in observance of number 1, terminates the agreement on the grounds that the interests referred to in the first sentence of subsection 4 are no longer being appropriately met as a result of a serious breach of contract by the broadcasting association, the *Land* supervisory authority shall, within two months, decide on revocation of the licence. In so doing it shall weigh up the significance and seriousness of the breach of contract and the interests referred to in the first sentence of subsection 4.

### **Article 30 Framework programme**

(1) Broadcasting associations may conclude agreements amongst themselves or with third parties concerning the provision and transmission of a framework programme or concerning the provision and transmission of own advertising in the third party's programming. The provisions of Sections II to V with the exception of section 15a, section 19, subsections 2, 3 and 5 to 7 shall apply to the framework programme; where Westdeutscher Rundfunk Cologne transmits the framework programme on the basis of an agreement pursuant to the first sentence, the Act on Westdeutscher Rundfunk Cologne shall apply thereto. Every broadcaster of a framework programme must enter into a commitment to the *Land* supervisory authority to offer transmission of the framework to every broadcasting association according to the same terms.

(2) All agreements concerning broadcasting associations pursuant to the first sentence of subsection 1 shall require the consent of the operating company.

### **Article 31 Local transmission area**

(1) The transmission area for local programmes shall be established by the *Land* supervisory authority by statute. The transmission area for local programmes is the area of a district or an independent town, provided the transmission capacities and local circumstances provide a basis for economically viable local broadcasting. In other cases, alternative transmission areas shall be established in accordance with the following principles:

1. the transmission area should not contain more than 600,000 inhabitants;
2. it should take account of coherent communications, cultural and economic areas;
3. it should take account of municipal boundaries;
4. it should provide a basis for economically viable local broadcasting.

Transmission areas shall be established such as to ensure that local radio services can develop across the whole geographical area covered by this Act.

(2) Where the transmission area extends beyond a single district or independent town to cover other districts, independent towns or incorporated counties (*kreisangehörige Gemeinden*), the *Land* supervisory authority may award the licence on condition that window programmes are broadcast within the local programme for parts of the transmission area.

(3) Where the programme is broadcast solely by conductors in a cable system, the transmission area shall be the area served by the cable installation.

## **Section VII Broadcasts at local events, in institutions, in residential units and higher education establishments**

### **Article 32 Broadcasts at local events and in institutions**

(1) For broadcasts which:

(a) are provided and transmitted in the geographical area of, and with a temporal link to, a public event; or

(b) are provided for institutions if they are used for the same purposes and the broadcasts can be received only there and if there is a functional link with the tasks carried out by the institutions;

the licence shall be awarded by the *Land* supervisory authority in simplified proceedings. The licence for broadcasts pursuant to the first sentence, letter (a), may be awarded to a single broadcaster for a single event only for a specific site in the relevant geographical transmission area (section 31) and only for the duration of the event, the maximum being for two-week duration of the event. The licence for broadcasts pursuant to the first sentence, letter (b), shall be awarded for not longer than four years. Advertising is not permitted in broadcasts pursuant to the first sentence, letter (b).

(2) Article 4, subsection 1, section 9, section 12, subsections 1, 2, 4 and 5, sections 14, 15, 16 and 18 shall apply *mutatis mutandis*; sections 22 to 22c shall apply *mutatis mutandis* only to broadcasts pursuant to subsection 1, first sentence, letter (a). The person or group of persons transmitting the broadcast in the institution shall be the broadcaster within the meaning of these provisions. Broadcasts relating to public relations work of individual parties, electors' groups or associations participating elections are permitted only in the institutions of such bodies.

(3) Section 10, subsections 1, 2, 8 and 9 shall apply *mutatis mutandis* to violations of subsections 1 and 2. The *Land* supervisory authority may prohibit broadcasts in full or in part if their instructions are not complied within a period of time which it shall fix.

(4) Licences for the transmission of broadcasts pursuant to subsection 1, first sentence, letter (a) by means of transmission capacities suitable for the wireless transmission of broadcasts may be awarded only if:

1. the transmission capacities are not required for the transmission of programme services to which no simplified licensing procedure applies;
2. the broadcasts cannot be received in areas considerably outside the site referred to in the licence; this shall not apply to the broadcasting of church services.

### **Article 33 Broadcasts in residential units**

Broadcasts outside institutions which are provided and transmitted in a building or a complex of associated buildings via a cable installation with up to one hundred connected residential units shall not require a licence. Advertising shall not be permitted. Prior to the commencement of broadcasting the owner of the building shall be required to notify the *Land* supervisory authority of the type and extent of broadcasts and to provide the name and address of the person or group of persons transmitting the broadcasts. Subsequent changes shall be notified without delay. Article 12, subsections 1, 2, 4 and 5, sections 14, 15, 16, 18 and section 32, subsection 2, second and third sentences, and subsection 3 shall otherwise apply *mutatis mutandis*.

### **Article 33a Broadcasts in higher education establishments**

(1) Licences shall be awarded by the *Land* supervisory authority in simplified licensing proceeds for a maximum of four years for broadcasts provided and transmitted in the local area of higher education establishments and which have a functional link to the tasks which the higher education establishments are required to perform. Public service broadcasters may participate in the broadcasts in accordance with the applicable statutory provisions. Advertising shall not be permitted in the broadcasts. Sponsorship shall be permitted.

(2) Article 4, subsection 1, section 9, section 12, subsections 1, 2, 4 and 5, sections 14, 15, 16, 18 and 22c shall apply *mutatis mutandis*. The member of the higher education establishment who transmits the broadcast shall be the broadcaster within the meaning of these provisions. Where several members of the higher education establishment transmit the broadcast they shall be the broadcaster. Broadcasts relating to the public relations work of individual parties, electors' groups or associations participating in elections shall not be permitted.

(3) Where several members of the higher education establishments fulfil the licensing requirements the *Land* supervisory authority shall endeavour to enable all applicants to transmit broadcasts. Where no agreement is reached, use of the transmission capacity may be divided among the application based on time.

(4) Article 32, subsection 3 shall apply *mutatis mutandis*.

(5) Licences for the transmission of broadcasts by means of transmission capacities suitable for the wireless transmission of programmes in the local area of the higher education establishment may be awarded only if the transmission capacities are not required for the transmission of programme services for which there is no simplified licensing procedure. The same shall apply *mutatis mutandis* for the transmission of broadcasts in cable installations.

## **Section VIII Open channels**

### **Article 34 Open channels in local broadcasting**

Programme contributions for open channels in local broadcasting shall be those programme contributions which are included in a local programme pursuant to section 24, subsection 4.

### **Article 35 Open channels in cable installations**

(1) Upon application the *Land* supervisory authority shall licence, for a minimum of two years and a maximum of four years, legal persons or permanent associations of persons to make available technical infrastructures (including recording equipment and other technical production aids) for an open television channel in which contributions can be transmitted via cable (working party). Article 5, subsections 1 and 2, section 8, subsection 1, second sentence, section 9 and section 10, subsection 1 shall apply *mutatis mutandis*; section 29, subsection 6 shall apply *mutatis mutandis* to municipal sponsors. Where several working parties exist the licence shall be awarded to that one which, given its economic and organisational situation, is expected to be most likely to fulfil the tasks incumbent on it.

(2) The licence shall be withdrawn if:

(a) a licensing condition was not met; or

(b) the working party obtained the licence by providing incorrect or incomplete information, by deception, by duress or other unlawful means.

(3) The licence shall be revoked if:

(a) a licensing condition ceases to be met;

(b) for reasons which the working party shall explain, it no longer makes available technical infrastructure even after expiry of a time period fixed by the *Land* supervisory authority;

(c) the working party has seriously violated its obligations under this Act three times, on each occasion the *Land* supervisory authority has issued a decision stating that the violations were serious and has served those decisions on the working party.

(4) The working party shall not be compensated for any property disadvantage suffered as a result of justified measures pursuant to subsections 2 and 3. Sections 48 and 49 of the Administrative Procedures Act for North Rhine-Westphalia shall not apply.

(5) Every operator of a cable installation shall make available to the working party, at its request, a television channel for the transmission of contributions from persons or groups which do not belong to a broadcasting association and which have not availed themselves of the authorisation

set out in section 26, subsection 1, first sentence (users). The first sentence shall not apply to operators of cable installations in institutions (section 32) and residential units (section 33). The operator of a cable installation with a capacity of more than fifteen television channels shall, upon request of the *Land* supervisory authority, make a television channel available to the working party free of charge for the transmission of user contributions.

(6) Anyone with unrestricted legal capacity and who has his main residence, his place of habitual residence or headquarters in the transmission area has, in accordance with this provision and the *Land* supervisory authority statute, the right, as a user vis-a-vis the working party, to express an opinion in the open channel. Contributions for the open channel must correspond to the provisions of section 12, subsection 1, section 12, subsection 2, first and second sentences, subsection 4, first sentence, subsection 5 and section 14, be provided free of charge and may not contain advertising. Every contribution must contain the name and address of the user and of the person responsible for the content (section 15, subsection 1). The user must provide a written commitment to release the *Land* supervisory authority and the working party from third party compensation claims. Every user shall bear responsibility for his own contribution. The working party may require compensation from every user for the costs of transmitting his contribution; in so doing they shall treat all users equally.

(7) Not permissible are:

1. contributions from state bodies and municipal sponsors (section 29, subsection 6);
2. contributions which, in a period of three months prior to an election in the transmission area, relate to public relations work of parties or electors' groups.

(8) Details shall be established by the *Land* supervisory authority by statute according to the following principles:

1. The working party may advise every user. In return for its costs it may provide production assistance and facilitate the lending of recording equipment. In so doing all users shall be treated equally.
2. In general a maximum duration shall be established for individual broadcasts and for the user's total monthly broadcasting time. This shall be fixed such to make it possible for contributions from all users to be transmitted within an appropriate timeframe.
3. Contributions shall normally be transmitted in the order in which they are received; the statute may contain alternative rules in particular to take account of scheduling wishes of users, especially for contributions on topical issues.
4. The person responsible for the contribution (subsection 6, third sentence) shall provide the working party with a recording of the contribution which the working party shall keep in storage until expiry of the time period referred to in section 17, subsection 2. Claims in exercise of the right to reply shall be directed to the responsible person; the working party shall provide his name and address upon request. The user and the person responsible for the individual case (subsection 6, third sentence) shall be jointly liable for the costs of the reply.

(9) In cases of doubt the decision shall be taken by the *Land* supervisory authority.

(10) Where a user violates the duties set out in subsections 6 and 7 or subsection 8 in conjunction with the *Land* supervisory authority statute, section 10, subsections 1, 2, 8 and 9 shall apply

*mutatis mutandis*. Following two serious violations of duties the *Land* supervisory authority may order that contributions by that user may not be transmitted for a period of up to six months. In the case of repeated violations the measures set out in the second sentence may also be ordered several times.

### **Article 36 Promotion of open channels**

(1) Within its budget the *Land* supervisory authority may award grants:

1. for contributions pursuant to section 34; and
2. for open channels in cable installations;

the grants for contributions pursuant to section 34 shall amount to at least fifteen per cent of the *Land* supervisory authority's revenue. The amounts of grants pursuant to the first sentence, numbers 1 and 2 shall be entered separately in the *Land* supervisory authority's budget plan.

(2) Grants shall be awarded upon application. Grants for contributions pursuant to section 34 may not exceed the actual costs of producing these contributions. In the cases set out in subsection 1, first sentence, number 1, applications may be made by those groups referred to in section 24, subsection 4, first sentence and, in the cases set out in subsection 1, first sentence, number 2, the working parties referred to in section 35, subsection 1. The *Land* supervisory authority shall require applicants to provide appropriate funding from their own resources.

(3) The *Land* supervisory authority may commission third parties experienced in running open channels to advise individual groups pursuant to section 24, subsection 4, working parties (subsection 35, subsection 1, first sentence) and users (section 35, subsection 5, first sentence).

(4) Details of grant awards shall be regulated by the *Land* supervisory authority in statutes.

## **Section IX Retransmission of programme services in cable installations**

### **Article 37 Applicable provisions**

(1) Article 2, subsections 3 and 4, sections 6 and 8 and the provisions of this Section shall apply to the retransmission of programme services in cable installations.

(2) Programme services which, outside the scope of this Act are transmitted lawfully, may, under the terms of this Section, be retransmitted with no change to their content, in full and simultaneously in cable installations. Third party rights, particularly in terms of copyright, shall remain unaffected.

(3) Sections 2 to 22c, 32 and 33 shall apply to the retransmission of programmes the content of which has been changed, which are not retransmitted in full or which are retransmitted at alternative times.

### **Article 38 Principles of retransmission**

(1) The retransmitted programme services shall be required to provide pertinent, comprehensive and truthful information. They must grant affected parties sufficient possibilities for exercise of their right to reply or a similar right. They shall respect the dignity of man and the moral, religious and ideological convictions of others. They may not commit a criminal offence. The

statutory provisions for the protection of human dignity and the protection of young persons (section 14) and the protection of personal honour shall be observed. No retransmitted programme service may simply portray individual schools of thought one-sidedly or serve a party or group, pressure group or ideology one-sidedly.

(2) Programmes, including commercial broadcasts, may not be retransmitted if, above and beyond the special broadcasting times provided for in this Act, they serve the public relations activities of individual parties or electors' groups participating in elections within the scope of the Basic Law.

(3) Articles 22 to 22d shall apply *mutatis mutandis*.

(4) In the case of domestic programme services retransmitted nationwide the law applicable in the *Land* of origin including the provisions of the Inter-State Broadcasting Agreement shall apply instead of subsections 1 to 3.

### **Article 39 Procedure**

(1) The broadcaster of a programme service or the operator of a cable installation shall notify the *Land* supervisory authority of the retransmission at the latest two months prior to its commencement. The first sentence shall not apply to the programme services listed in section 41, subsection 1, in their respective transmission areas.

(2) The notification must contain the name of the broadcaster and of the programme which is to be retransmitted. Notifiers must furnish the *Land* supervisory authority with evidence that third party rights, particularly with regard to copyright, do not prevent retransmission; notifiers must provide a written commitment to release the *Land* supervisory authority from third party copyright claims. In cases of doubt the *Land* supervisory authority may require a security to be paid to it within a time period which it shall fix.

(3) Notifiers are required to provide the *Land* supervisory authority without delay with information required to perform its duties and to present corresponding documentation.

(4) The operator shall notify the *Land* supervisory authority of a cable installation in which he intends to retransmit programme services. At the latest four months after commencement of retransmission he shall notify the *Land* supervisory authority of the channel allocations.

### **Article 40 Prohibition**

(1) The *Land* supervisory authority shall prohibit the retransmission of a programme service according to the detailed provisions of subsections 2 to 6 if:

(a) under the law applicable to him he is not authorised to provide broadcasting services or if the competent body in the *Land* of origin has found that the programme does not fulfil the provisions of the law applicable there;

(b) the broadcaster repeatedly violates the principles of retransmission (section 38), in particular by seriously impairing plurality of opinion on repeated occasions;

(c) the broadcasting service is retransmitted with changes, not in full or at alternative times;

(d) the provisions of section 41 are not observed; or

(e) contrary to section 39, subsections 1 to 3, notifications or documents are not produced in full or in good time, information known to be false is given or security payments are not made on time.

(2) Where a ground for prohibition exists prior to commencement of the retransmission, the *Land* supervisory authority shall order that retransmission may take place only once it has found that this Act does not prevent retransmission.

(3) Where the *Land* supervisory authority finds that a ground for prohibition exists after retransmission has commenced, it shall first notify thereof in writing the broadcaster in cases set out in subsection 1, letters (a) and (b), the operator of the cable installation in the cases set out in subsection 1, letter (c) and (d) and the person specifically responsible in the cases set out in subsection 1, letter (e). If the violation of the law continues or is repeated the *Land* supervisory authority may, after a hearing:

(a) in the cases set out in subsection 1, letter (a), take a final decision to prohibit the retransmission;

(b) in the cases set out in subsection 1, letters (b), (c) and (e), prohibit the retransmission for a specific period of time not exceeding one month, given the seriousness and frequency of the violation;

(c) in the cases set out in subsection 1, letter (d), prohibit with final effect those programmes which do not comply with the order of precedence set out in section 41.

Where, in the cases set out in subsection 1, letters (b), (c) and (e), the *Land* supervisory authority has issued decisions on three occasions stating that the violations were serious and issued a complaint in accordance with the first sentence, it shall prohibit retransmission with final effect.

(4) Notice of the prohibition shall be served on the operator of the cable installation and, if the broadcaster notified the retransmission, on the broadcaster.

(5) Broadcasters and operators of cable installations shall not receive compensation for any property disadvantage as a result of justified measures taken by the *Land* supervisory authority in accordance with subsections 1 to 3.

(6) Sections 48 and 49 of the Administrative Procedures Act for North Rhine-Westphalia shall not be applicable.

#### **Article 41 Order of precedence**

(1) The channels of a cable installation shall be allocated by the installation operator in such a way that all viewers and listeners may first receive the public service broadcasts provided under the WDR Act, the Agreement between ZDF and the *Land* and the Inter-State Agreement on Broadcasting, the licensed (section 4) *Land*-wide programme services provided transmitted by terrestrial means, the local programme services in the relevant transmission area and the open channels (section 35).

(2) Where the capacity of a cable installation is insufficient to carry all of the other retransmitted programmes (section 39), the programmes transmitted under licence (section 4) and those programmes which can be received by terrestrial means with an ordinary television aerial within area served by the cable installation, the *Land* supervisory authority shall decide upon an order

of precedence. In deciding on the order of precedence it shall take account of the following principles:

1. The overall range of programme services transmitted by a cable installation must reflect the range of opinions represented in broadcasting in as broad and complete a way as possible and in that way provide comprehensive information.

2. In deciding on the order of precedence, special consideration shall be given to the following:

(a) the programme's contribution to the range of services, specialisations and opinions conveyed overall by the programme services transmitted in the cable installation;

(b) the programme's range of content and the share of the overall programme afforded to information, education, advice and entertainment;

(c) the extent to which the programme covers events in the political, economic, social and cultural life of North Rhine-Westphalia or in parts of that *Land* and the contribution the programme thereby makes to plurality of opinion in North Rhine-Westphalia;

(d) the programme's contribution to portraying the federal and cultural diversity of the Federal Republic of Germany;

(e) the programme's contribution to the cultural and linguistic diversity of the cable network's overall services;

(f) coverage given to minority or target-group interests in the programme;

(g) the programme's contribution to understanding and unity among the peoples of Europe;

(h) the share of the programme given over to own, commissioned and joint productions from the German-speaking regions and Europe as a whole.

In taking the decision referred to in the first sentence, account shall be taken of the acceptability of the programme to viewers and listeners connected to the cable installation.

3. Programmes with broadly the same content and which provide different services for only a small amount of time may, under the selection principles set out in number 2, be included only once. In so doing, reception of the programmes referred to in subsection 1 must be ensured.

4. In transmission areas close to borders at least one of the programmes which can be received in each direction across the border by terrestrial means with an ordinary television aerial in area served by the cable installation shall be retransmitted. Where a decision as to an order of precedence allows for the transmission of the programmes referred to in the first sentence, those programmes shall be equivalent to the programmes referred to in subsection 1.

5. The *Land* supervisory authority may decide that up to two further foreign-language programmes intended for foreign citizens may be carried as a priority in cable installations in accordance with the selection criteria set out in number 2 in the transmission areas of which those foreign citizens represent a significant share of the population.

Those terrestrial programmes which, in the area served by the cable installation, can only be received with special aerials, may be included in the decision on the order of precedence if the

broadcaster of the programme service or operator of the cable installation has notified the *Land* supervisory authority accordingly (section 39).

(3) In allocating channels attention shall be given to ensuring that the priority programmes can be received by as large a number of viewers and listeners as possible. A channel may be allocated for use at differing times or in rotation for several programmes, provided and to the extent that this facilitates compliance with the criteria set out in subsection 2.

(4) The *Land* supervisory authority shall publish regularly, at intervals of no more than two years, a report on the development of the range of services and diversity of opinion in the overall range of programme services retransmitted in cable installations within the area of applicability of this Act.

(5) For the institutions and residential units referred to in sections 32 and 33 the *Land* supervisory authority shall, upon request of the owner of the institution or residential unit or the operator of the cable installation, permit exceptions to the order of precedence set out in subsections 2 and 3. In so doing due account shall be taken of the wishes of the viewers and listeners of the service.

(6) The *Land* supervisory authority shall make the findings required pursuant to subsections 1 to 3 and 5. It may by statute prescribe that the decision to be taken under the first sentence shall be taken at regular intervals though at least every eighteen months. It shall decide, together with the operators of the cable installations, on the allocation of channels in cable installations. With respect to public service programmes it shall establish contacts with WDR, *Deutschlandradio* and ZDF. The *Land* supervisory authority should establish transitional periods for implementation of the order of precedence decision by those broadcasters whose programme can no longer be carried by a cable installation because of that decision. Article 40, subsections 5 and 6 shall apply *mutatis mutandis*.

(7) The *Land* supervisory authority shall issue more detailed arrangements, taking account of subsections 1 to 3, 5 and 6, by statute. The statute shall, in particular, stipulate that:

1. the decision on the order of precedence and the allocation of channels shall be notified to the operator of the cable installation and the broadcasters concerned; and
2. technical criteria shall be applied to the concept of reception with an ordinary television aerial in area served by the cable installation based on the reception capability of an average state-of-the-art domestic aerial.

#### **Article 42 Special provisions for small residential units**

Article 37, subsection 1 and sections 38 to 41 shall not apply to the unchanged, full and simultaneous retransmission of specially obtained programmes in buildings or complexes of associated buildings with a cable installation with up to twenty connected dwellings.

### **Section X Distribution services**

#### **Article 43 Broadcaster's distribution services**

Every broadcaster may use the transmission capacities allocated to him to provide distribution services. The Inter-State Media Services Agreement of 27 June 1997 (North Rhine-Westphalia

Law Gazette, page 158) and section 20, subsection 2 of the Inter-State Agreement on Broadcasting shall apply to distribution services.

#### **Article 44 Transmission capacities for distribution services**

In other cases (section 43) transmission capacities may be used for distribution services only if, and to the extent that, no licence applications or retransmission applications have been filed for television or radio broadcasting.

### **Section XI Data Protection**

#### **Article 45 Applicable data protection rules**

Unless otherwise provided in this Section the relevant applicable rules on the protection of personal data shall be applied even if the data are not processed or used in electronic files. The existing competencies for monitoring observance of this provision shall remain unaffected.

#### **Article 46 Processing of data for journalistic purposes**

(1) Insofar as they process personal data solely for their own journalistic purposes, broadcasters and their agent companies shall take the necessary technical and organisational measures to secure data.

(2) Where the journalistic use of personal data leads to the broadcasting of reply statements by parties concerned, declarations of liability, orders or judgments preventing transmissions or retractions of data content, such reply statements, declarations of liability or retractions shall be appended to the stored data, kept with them for as long as the data themselves are kept and, where the data are transmitted, they shall be transmitted together with them.

(3) Where an individual's protected interests are harmed by a report, the person concerned may require information to be supplied about the stored personal data on which the report was based. Provision of information may be refused after consideration of the person's protected interests where that data may point to persons who co-operated in the preparation, production or transmission, or identify the author or of or the person who submitted or provided information concerning contributions, documents and communications for the editorial part of the report. Anyone affected hereby may require correction or the addition of a statement of his own of appropriate length. Subsection 2 shall apply *mutatis mutandis* to storage and transmission.

#### **Article 46a Data processing principles applicable to viewer subscriptions**

(1) Personal data relating to use of subscription-based programmes (section 21, subsection 1) may be collected, processed and used only insofar as permitted by this Act or another statutory provision or insofar as the viewer or listener has given consent.

(2) These data may be used for other purposes only insofar as permitted by this Act or another statutory provision or insofar as the viewer or listener has given consent.

(3) Access to subscription-based programmes may not be rendered dependent upon giving consent for the use of personal data for other purposes.

(4) The structuring and choice of technical installations for the transmission of subscription-based programmes shall be guided by the principle of collecting, processing and using no or as little personal data as possible.

(5) Anyone using subscription-based programmes shall be notified prior to collection of the type, extent, place and purpose of collecting his personal data. With automated procedures which facilitate subsequent identification of the person and which prepare for the collection, processing or use of personal data, notification must be given before the procedure commences. The content of the notification must be accessible to viewers or listeners at any time. They can waive their right to notification. Notification and the waiver shall be recorded. A waiver shall not be considered consent within the meaning of subsection 2.

(6) Prior to the granting of consent pursuant to subsection 2, viewers or listeners shall be informed of their right at all times to withdraw consent with effect for the future. Subsection 5, third sentence, shall apply *mutatis mutandis*.

(7) Consent may also be given by electronic means if the broadcaster ensures that:

1. it may only be given by an unambiguous and deliberate act of the viewer or listener;
2. it cannot be altered without trace;
3. its originator can be clearly identified;
4. the consent shall be recorded (date, time, content); and
5. the content of the consent notification can be accessed by the listener or viewer at any time.

(8) Insofar as technically possible and feasible, the broadcaster shall make it possible for use of, and payment for, subscription-based programmes to be effected anonymously or under a pseudonym. The listener or viewer shall be notified of this possibility.

#### **Article 46b Basic data**

(1) Insofar as personal data relating to a listener or viewer are required to justify, structure the content of or amend a contractual agreement relating to the use of subscription-based programmes, the broadcaster may collect, process and use such data (basic data).

(2) Processing and use of basic data for the provision of advice, for advertising or market research purposes or for adapting the broadcaster's technical installations is permissible only to the extent that explicit consent has been given for this by the listener or viewer.

#### **Article 47 Data processing in conjunction with subscription-based programmes**

(1) Personal data relating to the use of individual programme channels may be collected, processed and used only insofar and for as long as is required:

1. to facilitate the calling up of programme channels (user data);
2. to facilitate the invoicing of fees which the listeners or viewers are required to pay for use of programme channels (invoicing data).

Invoices for the use of programme channels may not indicate the time, duration, type, content and frequency of use of specific channels used unless the listener or viewer applies in writing to receive invoices listing individual channels used.

(2) Deletion of:

1. user data shall take place as early as possible, no later than immediately after the end of the specific use;

2. invoicing data shall taken place as soon as they are no longer required for invoicing purposes. Listener or viewer-related invoicing data stored to produce itemised listings relating to programme usage shall be deleted no later than eighty days after the listing has been dispatched unless the payment order has been contested within that time or has not been settled despite payment having been requested.

(3) User and invoicing data may not be passed on to third parties. This shall not apply to the forwarding of invoicing data to the broadcaster where such data is required to calculate the fee payable by the listener or viewer.

(4) User profiles shall be permissible only where pseudonyms are employed. User profiles collected under pseudonyms may not be collated with data relating to the person using the pseudonym.

(5) This shall be without prejudice to the viewer or listener's rights to information, correction, deletion and blocking of data under data protection law. This shall in particular include the right to inspect free of charge stored data concerning his person or pseudonym. Upon request the information may also be provided electronically.

(6) Whoever collects, processes or uses user and invoicing data shall take those technical and organisational measures which, above and beyond the provisions of data protection laws, shall ensure that:

1. user data pursuant to subsection 2, number 1, are deleted;

2. the invoicing data pursuant to subsection 2, number 2, are deleted;

3. the listener or viewer is capable of terminating the link for use of subscription-based programmes at any time;

4. the listener or viewer can transmit data only by an unambiguous and deliberate act;

5. the data relating to the use of subscription-based programmes are protected from consultation by third parties;

6. codes issued for data protection purposes shall offer state-of-the-art protection against unauthorised use.

#### **Article 48 Confidentiality**

Persons occupied at a data storage centre shall be required to preserve the confidentiality of facts which have come to their knowledge as a result of their activity unless such facts are obvious or, by their nature, do not need to remain confidential.

## **Article 49 Monitoring of data protection**

(1) Any broadcaster who as part of his activity under this Act automatically processes personal data shall, within one month of being licensed, appoint in writing one person as data protection officer and transmit that person's name to the *Land* supervisory authority. Article 36, subsections 2 to 4 of the Federal Data Protection Act shall apply *mutatis mutandis*. The *Land* supervisory authority may, upon request by the broadcaster, extend the deadline set out in the first sentence by no more than three months if the broadcaster can demonstrate that observing the deadline would cause him particular hardship.

(2) The person appointed by the broadcaster in accordance with the first sentence of subsection 1 shall ensure implementation of this Section and of other data protection rules. To that end he may, in cases of doubt, address the person appointed as the *Land* supervisory authority's data protection officer (section 50). Article 37 of the Federal Data Protection Act shall apply *mutatis mutandis*.

## **Article 50 Ensuring data protection**

(1) The Broadcasting Commission shall appoint a person as the *Land* supervisory authority's data protection officer. He shall exercise that office independently and be subject only to the law. He may be charged with other tasks within the *Land* supervisory authority; the second sentence shall not apply thereto.

(2) Whoever is appointed as the *Land* supervisory authority's data protection officer shall within the *Land* supervisory authority monitor observance of the data protection provisions of this Act, of the Data Protection Act for North Rhine-Westphalia and of other data protection rules and the observance of the data protection provisions of this Act by broadcasters. He shall support broadcaster's data protection officers in the exercise of their tasks (section 49, subsection 2).

(3) The *Land* supervisory authority's data protection officer shall notify the director, and at the same time inform the Broadcasting Commission, of violations by the *Land* supervisory authority of the provisions of this Act or of other data protection rules or other shortcomings concerning the collection, processing and use of personal data and invite comments to be submitted by a specific deadline.

(4) The *Land* supervisory authority's data protection officer may refrain from issuing a complaint or from inviting the director to submit comments if the shortcomings are insignificant or they have been remedied.

(5) In his complaint the *Land* supervisory authority's data protection officer may make proposals for resolving the shortcoming or otherwise to improve data protection.

(6) The comments which the director shall submit pursuant to subsection 3 shall also contain a description of the measures taken on the basis of complaints by the *Land* supervisory authority's data protection officer. The director shall forward a copy of the comments to the Broadcasting Commission.

(7) The *Land* supervisory authority's data protection officer shall present an activity report to the Broadcasting Commission every two years.

(8) The broadcaster shall be required, upon request, to provide the *Land* supervisory authority's data protection officer with all information required to perform his tasks. He may refrain from

providing information concerning questions the answers to which would expose him or one of the persons referred to in section 383, subsection 1, numbers 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or of proceedings pursuant to the Administrative Offences Act.

(9) Insofar as required to perform his duties the *Land* supervisory authority's data protection officer shall be authorised to enter land and premises and carry out checks and examinations there and to inspect the business papers, *id est*. the general statement which must be kept under section 37, subsection 2, of the Federal Data Protection Act, the stored personal data and the data processing programmes. The first sentence shall also apply to persons acting on behalf of the *Land* supervisory authority's data protection officer. The person required to furnish the information shall tolerate such measures. The basic right of inviolability of the home (Article 13, Basic Law) and the confidentiality of posts and telecommunications (Article 10) shall be restricted in this respect.

(10) The *Land* supervisory authority's data protection officer shall work with the *Land* data protection officer and the competent supervisory authority within the meaning of section 38 of the Federal Data Protection Act to ensure protection of data. Within their area of competence and authority they shall exchange information concerning violations of data protection rules and inform one another of the result of their checks; information shall be provided via the highest competent *Land* authority.

## **Section XII North Rhine-Westphalia *Land* broadcasting supervisory authority**

### **Article 51 Inception; constituent bodies**

(1) To perform the tasks prescribed by this Act an institute with legal capacity is hereby created under public law. It shall be entitled the "North Rhine-Westphalia *Land* broadcasting supervisory authority". The *Land* government shall issue a regulation stipulating the whereabouts of the *Land* supervisory authority's headquarters.

(2) The *Land* supervisory authority shall have the right to self-administration within the terms of this Act.

(3) The *Land* supervisory authority's constituent bodies shall be:

1. the Broadcasting Commission;
2. the director.

### **Article 52 Tasks**

(1) The *Land* supervisory authority shall, in the public interest, take the decisions and measures required in accordance with the provisions of this Act and the legal provisions enacted on the basis of this Act.

(2) Moreover, the *Land* supervisory authority shall have the task of:

1. advising broadcasters, operating companies, suppliers, operators of cable installations and others whose rights and obligations are regulated by this Act;

2. allocating to broadcasters the transmission capacities made available under the terms of the decision pursuant to section 3 of the highest Federal authority competent for Deutsche Telekom AG;

3. co-operating with the *Land* media supervisory authorities and to assume the tasks set out in section 38 of the Inter-State Agreement on Broadcasting;

4. promoting media competency and to contribute to media education;

5. promoting open channels;

6. supporting measures and projects which guarantee the greatest possible geographical provision of local broadcasting, and which serve the introduction and testing of new broadcasting techniques and initial and on-going training in broadcasting. *Land* supervisory authority participation in companies whose purpose is to promote the tasks set out in the first sentence is, in accordance with the budget plan, permissible to a maximum of one third of the capital and voting rights. The companies must take the form of legal persons and their statutes must make provision for a supervisory council or corresponding body. In participating the *Land* supervisory authority shall, by means of appropriate agreements, secure the requisite influence over the company's management, in particular appropriate representation in the supervisory body. It shall be stipulated that confirmation of the *Land* supervisory authority's activities within the company shall be obtained in accordance with commercial principles by an auditor within the meaning of section 319, subsection 1, first sentence, of the Commercial Code.

Until 31 December 2000 it may provide funding for the technical infrastructure required for local broadcasting in transmission areas where the cost of terrestrial provision is above average as well as for projects for new types of broadcast transmission technology.

(3) The transmission of broadcasting, retransmission of specially obtained programmes and new communications services including new programme forms and structures should be examined regularly as part of the *Land* supervisory authority's activities by independent scientific communications research institutes, in particular with regard to the media effects. The *Land* supervisory authority shall provide the necessary funding from within its budget.

(4) The *Land* supervisory authorities shall together with the media supervisory authorities publish a KEK report every three years or at the request of the states on the situation with regard to media concentration and on measures to secure plurality of opinion in the private broadcasting sector, taking into account

1. the interpenetration of television and related, media-relevant markets,

2. the horizontal interpenetration of broadcasters in different transmission areas, and

3. international interpenetration in the media sector.

The report shall also comment on the application of Articles 26 to 32 of the Inter-State Agreement on Broadcasting and on any necessity for change in these provisions. The media supervisory authorities shall publish an annual list of programmes to be drawn up by the KEK. The list of programmes shall contain all programmes, their broadcasters and interest-holders.

### **Article 53 Incompatibility of offices and activities**

(1) The following may not be members of bodies of the *Land* supervisory authority:

1. Members of the German federal government or a *Land* government;
2. municipal election officers except for those members of the Broadcasting Commission referred to in section 55, subsection 3, number 10, employees of the highest Federal authorities, highest *Land* authorities and civil servants who, according to federal or *Land* law, may be assigned non-active status;
3. broadcasters of programme services as defined by this Act and their members with the exception of the member of the Broadcasting Commission referred to in subsection 55, subsection 5, number 1, providers licensed under other statutory provisions, members of their constituent bodies and persons in a managerial working or service relationship to the broadcaster;
4. members of a body of a public service broadcaster and persons in a working or service relationship, or position similar to that of employee, to them, persons belonging to the supervisory or other body of a company pursuant to section 45 of the WDR Act or of an associated company (section 15, Companies Act), persons in a working or service relationship to them, and persons belonging to the supervisory bodies of another media supervisory authority or bodies which uses a media supervisory authority to carry out their activities or who are in a working or service relationship to them.

With the exception of the members of the Broadcasting Commission referred to in section 55, subsection 2, sixth sentence, and subsection 3, number 10, members of the European Parliament, the German *Bundestag*, one of the *Land* parliaments or a representative municipal authority may not belong to the Broadcasting Commission.

(2) No member and no alternate member of the Broadcasting Commission may enter into transactions with the *Land* supervisory authority either directly or indirectly, or on his own or another person's behalf, and that neither as proprietor, partner, board member, employee, company representative or as a body of a legal person created under private or public law. The same shall apply to non-profit-making companies. Sections 20 and 21 of the Administrative Procedures Act for North Rhine-Westphalia shall remain unaffected.

#### **Article 54 Pre-emptive termination of membership of the Broadcasting Commission**

(1) Membership of the Broadcasting Commission shall terminate pre-emptively upon:

- (a) death;
- (b) resignation;
- (c) removal from office;
- (d) loss of the ability to obtain rights in public election or to take up public office;
- (e) loss or restriction of legal capacity;
- (f) attainment of one of the incompatibility grounds referred to in section 53, subsection 1.

(2) The Broadcasting Commission shall take a decision as to pre-emptive termination of membership. Administrative proceedings to contest such decision shall not require preliminary proceedings to have been held.

#### **Article 55 Composition of the Broadcasting Commission; members' term of office**

(1) The Broadcasting Commission shall be composed of forty-five members. Of the members seconded according to subsection 2 at least six members must be women. Organisations and social groups must second a woman for at least every second term of office of the Broadcasting Commission. The requirements set out in the third sentence shall not apply only if, given the composition of a specific organisation or group, it is unable to second women on a regular basis or in an individual case. The chairman of the Broadcasting Commission shall be furnished with written evidence of such fact when the member is appointed. The grounds shall be made known to the Broadcasting Commission.

(2) Thirteen members shall be selected by the *Land* parliament. The members shall be elected by a system of proportional voting (d'Hondt system). List associations shall be permitted. Where more than one candidate receives the highest number of votes the decision concerning the secondment of the last member shall be taken by a lot drawn by the Speaker of the *Land* parliament. With the approval of all parliamentary groupings the *Land* parliament may decide, in derogation from the procedure set out in the second sentence, to elect the members from a joint list of candidates taken from all parliamentary groupings. A maximum of nine members may be members of the European Parliament, the German *Bundestag*, the *Land* parliament or a representative municipal body.

(3) Eighteen further members shall be seconded by the following organisations:

1. one member by the Protestant Churches in North Rhine-Westphalia;
2. one member by the Catholic Church;
3. one member by the *Land* associations of the Jewish Community in North Rhine-Westphalia and the parish of the Synagogue in Cologne;
4. one member by the North Rhine-Westphalia branch of the German Association of Trades Unions;
5. one member by the North Rhine-Westphalia branch of the German white collar union "DGB";
6. one member by the North Rhine-Westphalia branch of the German Federation of Civil Servants;
7. one member by the *Land* Association of Employers Associations in North Rhine-Westphalia;
8. one member by the Crafts Chamber of North Rhine-Westphalia, the Westphalia-Lippe Agricultural Association and the Rhineland Agricultural Association;
9. one member by the Association of Liberal Professions in North Rhine-Westphalia;
10. one member by the North Rhine-Westphalia Cities Assembly, the Assembly of Cities and Counties in North Rhine-Westphalia and the North Rhine-Westphalia Assembly of Rural Districts;

11. one member by the working party of the Executive Association of Independent Welfare Organisations in North Rhine-Westphalia;
  12. one member by the North Rhine-Westphalia *Land* Sports Association;
  13. one member by the North Rhine-Westphalia Consumers' Association, *Land* working party of the Consumers' Associations;
  14. one member by the North Rhine-Westphalia *Land* associations of the associations recognised under section 29, subsection 2, of the Federal Nature Protection Act;
  15. one member by the *Land* youth circle in North Rhine-Westphalia;
  16. one member by the Lippe Federation of Displaced Persons, the Rhineland Association for the Preservation of Monuments and Countryside Protection and the Westfalian Federation of Displaced Persons;
  17. one member by the North Rhine-Westphalia *Land* association of the Association of Victims of War and Military Service, the Disabled and Social Security Pensioners and the North Rhine-Westphalia *Land* association of the Reich Federation of Victims of War, the Disabled, Social Security Pensioners and Survivors;
  18. one member by the *Land* working party of Families Associations in North Rhine-Westphalia and the North Rhine-Westphalia Women's Council.
- (4) One member shall be seconded from the circle or foreign citizens by the *Land* working party of the Foreign Citizens' Advisory Council in agreement with the working party of the Executive Associations of Independent Welfare Organisations in North Rhine-Westphalia;
- (5) Thirteen further members shall be seconded, as set out below, from the spheres of journalism, culture, art and science:
1. one member by the Expert Group on literature of the North Rhine-Westphalia district association of the trade union for media, print, paper, journalism and art workers;
  2. one member by the Expert Group on broadcasting, film and audio-visual media of the North Rhine-Westphalia district association of the trade union for media workers and the North Rhine-Westphalia *Land* association of the Co-operative of German Stageworkers;
  3. one member by the North Rhine-Westphalia *Land* Music Council;
  4. one member by the German Association of Journalists, the North Rhine-Westphalia *Land* association of the Trades Union of Journalists, the Expert Group on Journalism;
  5. one member from the North Rhine-Westphalia "Filmbüro" and the Association of the Television, Film and Video Industry in North Rhine-Westphalia;
  6. one member by the North Rhine-Westphalia *Land* association of the Federal Association of Graphical Artists;
  7. one member by the North Rhine-Westphalia *Land* Association of Adult Education Institutes and the *Land* organisations for further education under other sponsorship;

8. one member by the North Rhine-Westphalia *Land* Conference of Rectors and the *Land* Conference of Rectors of Institutes of Higher Education in North Rhine-Westphalia;
9. one member by the association of newspaper publishers in North Rhine-Westphalia and the association of newspaper publishers in North Rhine-Westphalia;
10. one member by the North Rhine-Westphalia Regional Group of the Association for Media Education and Communications Culture in the Federal Republic and the Adolf Grimme Institute;
11. one member by the North Rhine-Westphalia Association of Local Broadcasting;
12. one member by the Association of Radio Broadcasting Operating Companies in North Rhine-Westphalia and the *Land* association "Citizens' Radio North Rhine-Westphalia";
13. one member by the interest group "Non-profit-making broadcasting in North Rhine-Westphalia" and the *Land* association of "Citizens' Radio North Rhine-Westphalia".

(6) For each member an alternate member shall also be selected or seconded. The alternate member shall, when the full member is prevented from attending, attend meetings of the Broadcasting Commission and its committees with full rights.

(7) The chairman in office of the Broadcasting Committee shall ensure that the secondment has taken place in accordance with the statutes, regulations or comparative rules of the organisations entitled to second members. Further details as to the secondment procedure shall be set out in the statute.

(8) The term of office for members of the Broadcasting Commission shall be six years; it shall commence with the first meeting of the Broadcasting Commission. Re-election or re-secondment of an ordinary or alternate member of the Broadcasting Commission is permitted.

(9) For as long and insofar as members are not seconded to the Broadcasting Commission, its number of members shall be reduced accordingly.

(10) The members seconded pursuant to subsections 3 and 5 may be recalled by the seconding organisations before the end of their period in office if they leave the organisation concerned;

(11) Where a member or alternate member leaves the Broadcasting Commission his successor shall be elected or seconded for the remainder of the current term of office of the Broadcasting Commission in accordance with the provisions set out above.

(12) The members and alternate members of the Broadcasting Commission should possess knowledge in areas related to broadcasting. In performing their duties they must represent the interests of the general public and in so doing are not bound by orders.

(13) The members and alternate members of the Broadcasting Commission and their deputies may not be prevented from taking up and exercising that activity or suffer a disadvantage in their office or working relationship as a result. In particular they may not have their employment terminated or notice to quit served on them. Where they are in a service or working relationship they shall be granted free time required to carry out their activity.

#### **Article 56 Chairmanship and procedure in the Broadcasting Commission; reimbursement of costs**

(1) The Broadcasting Commission shall elect from among its members a chairman and a vice chairman.

(2) The Broadcasting Commission shall enact rules of procedure. Details shall be set out by statute.

(3) The members of the Broadcasting Commission shall act on a voluntary basis. They shall be entitled to reimbursement of travelling expenses with the exception of a daily allowance according to provisions set out in the statute. Moreover, for each meeting day they shall receive a meeting allowance amounting to dm 60 and a monthly allowance for expenditure amounting to dm 1,000; this shall increase in accordance with increases in the monthly expenses paid to members of the North Rhine-Westphalia *Land* parliament. The chairman shall receive double the amount, the member who deputises for the chairman as well as the committee chairmen shall receive one and a half times the amount and the alternate members of the Broadcasting Commission shall receive half the amount of the allowance.

### **Article 57 Tasks of the Broadcasting Commission**

(1) The Broadcasting Commission shall assume the tasks of the *Land* supervisory authority insofar as they have not been bestowed upon the director.

(2) The following measures by the director shall require the consent of the Broadcasting Commission:

1. purchase, sale and mortgaging of land;
2. contracting of loans and use of bank credit;
3. assumption of third-party liabilities and guarantees;
4. contracts exceeding a total volume of dm 100,000 per annum; this shall not apply to conclusion of service and employment contracts;
5. expenditure exceeding or outside that planned;
6. selection of a deputy.

The amount stated in sentence 1, number 4, may be increased by statutory procedure in accordance with changes in the economic situation.

(3) In performance of its tasks and in monitoring the director's management activities, the Broadcasting Commission may require the director to provide it with the necessary information and may inspect the *Land* supervisory authority's documentation. For this purpose it may also charge individual members and, in particular, experts with specific tasks. The Broadcasting Commission may charge the director with preparing draft statutes.

(4) Preliminary proceedings shall not be conducted against decisions of the Broadcasting Commission.

### **Article 58 Broadcasting Commission committees**

- (1) The Broadcasting Commission may set up committees. It shall charge a committee with matters relating to youth protection.
- (2) The members of the committees shall be appointed by the Broadcasting Committee from among its members. They may be removed from the committee for important reasons by a two thirds majority of the members. Men and women should be represented in the committees in accordance with their respective numbers in the Broadcasting Committee.
- (3) The committees shall prepare decisions of the Broadcasting Committee in the relevant areas.

#### **Article 59 Meetings of the Broadcasting Commission**

- (1) The meetings of the Broadcasting Committee shall be convened as required by the chairman. The Broadcasting Commission must be convened upon request of at least one quarter of the members or on request of the director. The request must indicate the subject for discussion.
- (2) The Broadcasting Commission shall meet *in camera*. It may meet in public session. The director shall attend meetings of the Broadcasting Commission and its committees; he shall be heard if he so requests. The *Land* government is authorised to send a representative to attend meetings of the Broadcasting Commission and its committees; he shall be heard if he so requests. Attendance of other persons shall be regulated by statute.
- (3) The Broadcasting Commission shall be competent to take decisions if two thirds of its members are in attendance and all members were invited to attend in accordance with its statute.
- (4) If the Broadcasting Commission is not competent to take decisions all members shall once more be invited to attend within a reasonable time under the same agenda. At the subsequent meeting the Broadcasting Commission shall be competent to take decisions irrespective of the number of members present. However, decisions may not only be taken with votes cast by the members elected pursuant to section 55, subsection 2.
- (5) Decisions of the Broadcasting Commission shall require the consent of a majority of the members present. Decisions concerning the awarding, revocation or withdrawal of a licence, on prohibitions and on the holding of public sessions and those concerning statutes and amendments to them shall require the consent of the majority of members. Decisions relating to the removal from office of the director shall require the consent of two thirds of the members of the Broadcasting Commission.
- (6) Subsections 3 and 4 shall apply *mutatis mutandis* to elections. Whoever receives the majority of votes of the members of the Broadcasting Commission shall be elected. Where this does not lead to selection a new ballot shall be held immediately in which whoever receives most votes shall be elected. Where the person selected does not agree to the appointment a new ballot shall be held in accordance with sentences 2 and 3. Where fewer than a majority of members is present at a meeting held in accordance with section 4, whoever receives more than half the votes cast shall be elected; subsection 4, third sentence, shall be applicable. In the case of a draw after three ballots, the decision shall be taken by drawing lots. Further details shall be decided by the statute.

#### **Article 60 Tasks of the director**

- (1) The director shall:

1. take those measures set out in Articles VII and IX with the exception of the prohibition set out in section 40 and the decisions set out in section 41, subsection 6;
2. provide advice and ensure co-operation as set out in section 52, subsection 2, numbers 1 and 3;
3. perform the tasks set out in section 8, subsection 5, number 1, second sentence, section 9, subsection 9, subsection 4 and in section 29, subsection 7, number 1, second sentence;
4. prepare and implement decisions of the Broadcasting Commission;
5. carry out day-to-day administration;
6. take measures required to monitor compliance with the provisions of this Act;
7. prepare the draft budget plan, annual accounts and annual report;
8. engage, promote or dismiss *Land* supervisory authority employees and exercise other employer prerogatives in relation to them;
9. publish the statutes in the *Land* supervisory authority's journal of laws and regulations for North Rhine-Westphalia;
10. represent the *Land* supervisory authority before the courts and out of court insofar as is not otherwise provided for in section 61, subsection 4;

(2) The director shall manage and allocate the work of the *Land* supervisory authority. Article 57, subsection 1, shall remain unaffected. If he is unable to do so the tasks set out in the first sentence and pursuant to section 35, subsection 4, first sentence, second clause, of the Inter-State Agreement of Broadcasting shall be performed by his deputy (section 57, subsection 2, first sentence, number 6). Appointment as deputy shall not exceed the duration of the director's term of office.

(3) The director shall appoint an equal opportunities officer.

#### **Article 61 Election; term of office; removal from office; exclusion of the director**

(1) The Broadcasting Commission shall elect a director for a term of six years. The director or his deputy should be qualified to hold judicial office. The director may be re-elected. The applicants shall be identified by public advertisement. After expiry of the term of office the director shall continue to conduct business until a successor has been elected.

(2) The director may be removed prior to the end of the term in office only on important grounds. He shall be heard before the decision is taken.

(3) Whoever:

(a) has his place of habitual residence outside North Rhine-Westphalia;

(b) has lost his qualification to hold judicial office as a result of a judicial decision;

(c) does not have, or has only limited, legal capacity;

(d) cannot be pursued without restriction before the courts;

(e) is a member of the Broadcasting Commission

is excluded from holding the office of director.

(4) The chairman of the Broadcasting Commission shall conclude the service contract with the person elected and shall represent the *Land* supervisory authority before the Broadcasting Commission both before the courts and out of court.

## **Article 62 Budgetary and economic management**

(1) The basis for the budgetary and economic management of the *Land* supervisory authority shall be the budget plan. The director shall transmit the draft plan to the Broadcasting Commission in good time prior to commencement of the budget year. The Broadcasting Commission shall establish the budget.

(2) The budget year shall be the calendar year. In drawing up and implementing budget, regard being had to the principles of thrift and sound economics, account shall be taken only of that expenditure and those appropriations for payment commitments in future years (commitment appropriations) which are required to perform the tasks of the *Land* supervisory authority. The budget plan shall show all expected revenue, anticipated expenditure and foreseen commitment appropriations for the budget year. Revenue and expenditure shall be balanced.

(3) To ensure proper budgetary and economic management the *Land* supervisory authority may create reserves to fulfil tasks incumbent on it in future years if reserves are required to do so and the sound economic basis of the measure for which the reserve is created is shown in the budget plan at the time the reserve is created. In particular in the case of investment reserves the economic basis on which reserves are created must be established in advance in profitability calculations. The creation of free reserves shall not be permitted. Returns on investments from reserves shall be paid back into the reserve. The need for reserves shall be established afresh in each budget year.

(4) Details relating to the preparation and implementing of the budget plan shall be regulated by the *Land* supervisory authority by statute.

(5) If, by the end of the budget year, the draft budget plan for the following year has not yet been established, the director shall be authorised to make all expenditure required:

(a) to continue operation of the *Land* supervisory authority as hitherto;

(b) to implement measures decided by the Broadcasting Commission;

(c) to continue buildings, acquisitions and other payments provided they were already authorised under the previous year's budget plan;

(d) to fulfil legally substantiated obligations of the *Land* supervisory authority.

(6) The annual report shall give a reliable impression of the *Land* supervisory authority's assets and revenue. The annual report shall provide detailed information on these points and report on incidents of special significance which occurred after the end of the budget year.

(7) The Broadcasting Commission shall establish the annual accounts on a provisional basis, approve the annual report and transmit both to the *Land* government and the *Land* court of auditors.

### **Article 63 Auditing of annual accounts**

(1) The annual accounts and the propriety and sound economics of the budgetary and economic management of the *Land* supervisory authority shall be audited by the *Land* court of auditors according to the following provisions:

(2) It shall, in particular, audit:

1. revenue, expenditure, commitment appropriations, assets and liabilities;
2. measures with possible financial repercussions;
3. deposits and advances.

(3) The audit shall also cover observance of the provisions and principles of budgetary and economic management applicable to the *Land* supervisory authority, in particular whether:

1. the budget plan has been observed;
2. revenue and expenditure have been justified and documented and the annual accounts have been properly drawn up;
3. operations are economically viable and thrifty;
4. tasks could be performed more effectively with less expenditure on staff and resources or in some other way.

### **Article 64 Audit procedure**

(1) The *Land* court of auditors shall decide on the timing and type of the audit. It may entrust the collection of information from the *Land* supervisory authority to agents. It may call in experts. The *Land* supervisory authority shall commission experts by agreement with the the *Land* court of auditors and shall pay costs incurred as a result.

(2) In agreement with the *Land* court of auditors the *Land* supervisory authority may call upon auditors within the meaning of section 319, subsection 1, first sentence, of the Commercial Code, to audit parts of the annual accounts; it shall pay costs incurred as a result. In this case the audits carried out by the *Land* court of auditors and the auditor referred to in sentence one shall be co-ordinated.

(3) The *Land* court of auditors may, at its discretion, restrict the audit and leave parts of the budget accounts and asset accounts unaudited.

(4) Documents which the *Land* court of auditors considers necessary to perform its tasks shall at its request be transmitted or presented by the *Land* supervisory authority within a specific time period.

(5) The *Land* court of auditors and its agents shall be provided with information requested.

(6) The *Land* court of auditors shall notify the results of its audit only to the *Land* supervisory authority and the *Land* government as legal supervisor. The Broadcasting Commission shall hold a fresh debate on the annual accounts based on a written statement of the director and finally establish them.

(7) Upon conclusion of the procedure the director shall publish in the Ministerial Journal for the *Land* of North Rhine-Westphalia:

1. a comprehensive overview of the annual accounts;
2. a summary of the main passages of the annual report;
3. those parts of the audit report which the *Land* court of auditors has not declared discharged and the comments by the Broadcasting Commission concerning them;
4. the Broadcasting Commission decisions terminating the legal proceedings.

### **Article 65 Funding**

(1) The *Land* supervisory authority shall meet its funding requirements from the additional share of the standard television and radio licence fee pursuant to section 10 of the Inter-State Agreement on the Funding of Broadcasting (Article 5 of the Third Amendment to the Inter-State Agreement on Broadcasting of 26 November 1996, North Rhine-Westphalia Law Gazette, page 484) in conjunction with section 40, subsections 1 and 2 of the Inter-State Agreement on Broadcasting, by levying administrative fees and recouping its costs. Section 105, subsection 1, *Land* Budget Code, shall not apply.

(2) The *Land* supervisory authority shall receive fifty-five per cent of the share referred to in subsection 1. Insofar as this share is not required to perform the *Land* supervisory authority's tasks, it shall accrue to WDR. The amount of the share shall derive from the final annual accounts. The amount shall be payable when the accounts are finally established. Once the annual accounts have been provisionally established, WDR may require payment of a reasonable advance.

(3) The *Land* supervisory authority shall levy administrative fees on its official acts; moreover it shall seek reimbursement of its costs. The list of chargeable activities and the level of the fees and of costs to be recouped shall be decided by statute by the *Land* supervisory authority. The minimum fee shall be dm 100, the maximum fee dm 200,000.

(4) The statute referred to in subsection 3 shall require approval by the *Land* government which may be withheld only if the statute violates this Act.

### **Article 66 Legal supervision**

(1) The *Land* government shall assure legal supervision of the *Land* supervisory authority. It shall be authorised to notify the competent body in writing of measures or omissions of the *Land* supervisory authority in violation of this Act.

(2) Where the violation is not reversed within a reasonable period to be fixed by the *Land* government the *Land* government shall instruct the *Land* supervisory authority to implement, at its own expense, measures which the *Land* government will establish in detail.

(3) Where the violation is based on an act or omission of the director, measures pursuant to subsections 1 and 2 are permissible only after the Broadcasting Commission has not assumed its supervisory function within a reasonable period or farther-reaching legal supervisory measures are required. In individual cases the *Land* government shall be entitled to fix a reasonable period within which the Broadcasting Commission shall assume its supervisory function.

(4) The *Land* supervisory authority may file complaints with the administrative court against measures pursuant to subsections 1 to 3. Preliminary proceedings shall not be held.

#### **Article 66a Broadcasting and line costs**

(1) The *Land* supervisory authority shall levy a compensatory payment from a broadcaster of a framework programme (section 30, subsection 1) for each transmission area in which his framework programme is accepted on the basis of an agreement with a broadcasting association.

(2) The payment shall be levied proportionately for broadcasting and line costs applicable to the broadcasting time during which the broadcasting association transmits the framework programme.

(3) The *Land* supervisory authority shall not levy the compensatory payment if the agreement between the broadcasting association and the broadcaster of the framework programme corresponds to an arrangement pursuant to subsection 2.

(4) Details shall be decided by the *Land* supervisory authority by statute.

### **Section XIII Provisions on administrative fines; transitional and concluding provisions; pilot schemes**

#### **Article 67 Administrative offences**

(1) An administrative offence shall be committed by anyone who:

1. as a broadcaster transmits programme services without a licence in contravention of sections 4, 23 and 32;

2. in contravention of section 9, subsection 2, section 25, subsection 4, sixth sentence, does not provide information in good time or, in contravention of section 9, subsection 1, in conjunction with section 21, subsection 6, of the Inter-State Agreement on Broadcasting fails to notify the *Land* supervisory authority without delay of changes to the essential circumstances since the application was submitted or the licence awarded; this shall also apply to other persons required to provide information or documentation as part of the licensing procedure;

3. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (a), which are not permissible because they violate section 130, Criminal Code;

4. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (b), which are not permissible because they violate section 131, Criminal Code;

5. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (c), which are not permissible because they glorify war;

6. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (d), which are not permissible due to a violation of section 184, Criminal Code;
7. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (e), which are not permissible because of their obvious aptness seriously to endanger the morals of children or adolescents;
8. as a broadcaster transmits broadcasts contrary to section 14, subsection 1, letter (f), are not permissible because they portray people who are dying or who are or were exposed to severe physical or mental suffering in a manner which constitutes a violation of human dignity and show a real occurrence without any predominant, legitimate interest in especially this form of reporting;
9. as a broadcaster transmits broadcasts that are apt to endanger the physical, mental or emotional well-being of children or adolescents contrary to section 14, subsection 2, first sentence, without ensuring through the timing of the broadcast or in some other manner, that children or adolescents in the age groups concerned will not normally see or hear the programmes in question;
10. as a broadcaster transmits broadcasts contrary to section 14, subsection 2, sentences 2 and 3 or subsection 3, first sentences, in the cases referred to in section 14, subsection 2, third sentence, or subsection 3, first sentence, without permission to do so having been given by the *Land* supervisory authority pursuant to section 14, subsection 5;
11. as a broadcaster transmits broadcasts contrary to section 14, subsection 3, first sentence, without prior to transmission having set out in writing the grounds which have led to an assessment divergent from subsection 3, first sentence, or contrary to section 14, subsection 3, second sentence fails to notify the *Land* supervisory authority upon request of the grounds which led to an assessment divergent from section 14, subsection 3, first sentence;
12. as a broadcaster transmits programme announcements with moving pictures concerning broadcasts which are subject to broadcasting time restrictions pursuant to section 14, subsection 2 or 3, outside those times;
13. as a broadcaster fails to supply the name of a person who is responsible for the content of programme services;
14. as responsible person (section 15) fails to comply, comply correctly or comply fully with his obligation:
  - (a) to name the broadcaster pursuant to section 16, subsection 1, first sentence; or
  - (b) to indicate his own name pursuant to section 16, subsection 1, second sentence;
15. as broadcaster of television programmes broadcast *Land*-wide fails to designate a commissioner for the protection of young persons (section 15a) or fails to take sufficient account of the commissioner in particular in relation to the acquisition, production, scheduling and structuring of programmes;
16. as a broadcaster fails to comply, comply correctly or comply fully with his duty to record and store programmes pursuant to section 17, subsections 1 and 2;

17. as broadcaster fails to comply with his duty of openness pursuant to section 21, subsection 3, second sentence;
18. as a broadcaster contrary to section 22, subsection 3, sentences 1 and 2 fails to make advertising clearly distinguishable as such or fails clearly to separate it from other programme items;
19. as a broadcaster contrary to section 22, subsection 4, second sentence, does not announce commercial broadcasts;
20. as a broadcaster transmits surreptitious advertising contrary to section 22, subsection 5, first sentence;
21. as a broadcaster contrary to section 22a, subsection 1, interrupts religious services and children's programmes, contrary to section 22a, subsection 3, first sentence, fails to insert advertising between the autonomous parts or during the intervals of television broadcasts made up of autonomous parts, or sports broadcasts and broadcasts of similarly structured events and performances containing advertising or contrary to the conditions set out in section 22a, subsection 3, second sentence, and subsections 4 and 5, interrupts broadcasts with advertising;
22. as broadcaster contrary to section 22a, subsection 2, fails to transmit television advertisements in blocks;
23. as broadcaster contrary to section 22b, subsection 1, first sentence, exceeds the permitted daily duration of advertising time;
24. as broadcaster contrary to section 22b, subsection 1, second sentence, exceeds the permitted duration of advertising clips within any one hour period;
25. as broadcaster contrary to section 22b, subsection 2, second sentence, acts as contracting party or representative for the ordering of goods or services;
26. as broadcaster contrary to section 22c, subsection 2, fails to indicate the sponsor at the beginning and end of a programme;
27. as sponsor contrary to section 22c, subsection 3, influences the content and schedule of the sponsored programme;
28. as broadcaster contrary to section 22c, subsection 4, transmits broadcasts that are not permitted;
29. as broadcaster contrary to section 22c, subsection 5 and 6, transmits sponsored programmes that are not permitted;
30. as executive committee of a broadcasting association pursuant to section 25 contrary to section 24, subsection 4, fourth sentence, fails to make available upon request to the groups referred to in section 24, subsection 4, first sentence, the studio facilities required for the production including advice needed to run them;
31. as legal representative of an operating company pursuant to section 29 contrary to section 25, subsection 4, sixth sentence, fails to provide the broadcasting association pursuant to section 25

in good time with the information required to draw up the business plan and staffing plan pursuant to section 25, subsection 4, first sentence;

32. as operator of a cable installation retransmits programmes without notification pursuant to section 39, subsection 1, first sentence, continues retransmission of programmes despite a prohibition pursuant to section 40, subsection 1, or fails to take notice of *Land* supervisory authority findings pursuant to section 41, subsection 6;

33. as a broadcaster collects, processes or uses personal data beyond the permitted framework set out in section 47, subsection 1, or stores invoicing data in violation of his duties set out in section 47, subsection 1;

34. contrary to section 47, subsection 3, transmits data or contrary to section 47, subsection 2, numbers 1 and 2, fails to delete personal data.

(2) The administrative authority competent for these matters shall be the *Land* supervisory authority.

35. The administrative offence may be punished by regulatory fine of up to dm 500,000. Insofar as proceedings relating to an administrative offence pursuant to subsection 1, number 1, number 2, second alternative, numbers 3 to 12, 15, 18 to 20, 22, 23 to 25, 28, 32 or 33 have been initiated in several *Länder* the *Land* media supervisory authorities shall agree amongst themselves which *Land* media supervisory authority shall pursue the proceedings.

## **Section 68 Amendment to the WDR Act**

[Not included: provision amending the WDR Act]

## **Article 69 Transitional provisions**

(1) Past allocations to public service broadcasters and the *Land* supervisory authority for use by private broadcasters shall remain unaffected. Where use is not made of the allocated transmission capacities or where these are no use for more than twelve months, section 3 shall apply.

(2) Service contracts with the first deputy director and the second deputy director which existed at the entry into force of the Ninth Broadcasting Amendment Act (North Rhine-Westphalia Law Gazette 1998, page 148) shall remain unaffected until the end of the current term of office; for that period section 59, subsection 5, third sentence and section 61, subsection 2, of the *Land* Broadcasting Act for North Rhine-Westphalia in the version published on 24 August 1995 (North Rhine-Westphalia Law Gazette, page 994) shall continue to apply.

(3) During the term of office of the Broadcasting Commission of the *Land* supervisory authority underway at the time of the entry into force of the Ninth Broadcasting Amendment Act (North Rhine-Westphalia Law Gazette 1998, page 148), section 55, subsection 4, shall apply in the version published on 24 August 1995 (North Rhine-Westphalia Law Gazette, page 994), as last amended by the Eighth Broadcasting Amendment Act of 30 January 1996 (North Rhine-Westphalia Law Gazette, page 75).

## **Article 70 Transitional provision concerning the right to short coverage in television**

Exercise of the right to short coverage shall be excluded at events which became the subject of exclusive contractual arrangements prior to 1 January 1990.

#### **Article 71 Transitional provision concerning retransmission**

(1) Retransmission of programme services which, upon entry into force of this Act, retransmitted in cable installations based on a written confirmation from the Broadcasting Committee (section 3, subsection 2, Provisional Act on Retransmission in North Rhine-Westphalia of 19 March 1985, North Rhine-Westphalia Law Gazette, page 248) shall remain permissible without the need for a new notification (section 39, subsection 1).

(2) The duties and powers of the *Land* supervisory authority under Section IX of this Act shall be assumed by the Broadcasting Committee (section 6, Provisional Act on Retransmission in North Rhine-Westphalia) until two months have elapsed following the first meeting of the Broadcasting Commission. Procedures pending shall be continued by the *Land* supervisory authority.

#### **Article 72 Pilot projects concerning new broadcasting techniques, programme services or broadcasting services**

(1) Pilot projects may be conducted with new broadcasting techniques, programme services or broadcasting services. The pilot projects are intended to prepare decisions relating to the future use of these broadcasting techniques, programme services or broadcasting services. It shall be ensured that it is possible in pilot projects to assess the social consequences of the techniques, programmes or services tested.

(2) The *Land* government shall be empowered to establish details of the trial conditions and the trial area in line with the purpose and duration of the test by regulation with the consent of the *Land* parliament's executive committee. This shall also apply to changes made during the running time of the project. Pilot projects in local television shall be subject to special statutory regulation.

(3) The *Land* government shall inform the competent public service broadcasters in North Rhine-Westphalia and the *Land* supervisory authority of the transmission capacities earmarked for pilot projects. It shall endeavour to bring about agreement between the public service broadcasters and the *Land* supervisory authority as to an appropriate allocation of these transmission capacities. Where agreement is reached the *Land* government shall allocate the transmission capacities according to the terms of the agreement. Where no agreement is reached within one month of information being given about the transmission capacities, the *Land* government shall decide taking account of the purpose of the trial and the comments submitted by the interested parties. Transmission capacities in cable installations earmarked for pilot projects may not be used for the purposes of retransmission in accordance with Section IX.

(4) Whoever wishes to provide and transmit programmes in pilot projects shall require a licence. A private broadcaster wishing to contribute a programme, for which a licence was awarded under this Act, to a pilot project shall not require a licence for that programme. The licence shall be awarded by the *Land* supervisory authority in simplified proceedings for the duration of the pilot project. Article 4, subsection 1, section 5, subsections 1 and 2, section 9, subsections 1 and 2, section 10, section 12, subsections 1, 2, 4 and 5, sections 14, 15, 16 to 18, 21 to 22a, section 22b, subsection 1, sections 22c, 45 to 49 and 67 shall apply *mutatis mutandis*.

(5) Subsection 4 shall not apply to a public service broadcaster who provides and transmits a programme as part of a pilot project conducted alone or together with other broadcasters.

**Article 73 Entry into force**

This Act shall enter into force on 6 March 1998.