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Federal Act on Radio and Television (RTVA)

of 24 March 2006 (status as of 1 February 2010)

The Federal Assembly of the Swiss Confederation,

having regard to Articles 71, 92 and 93 of the Federal Constitution (FC)¹,
and having regard to the Federal Council Dispatch of 18 December 2002²,
decrees:

Title 1: Scope and Definitions

Art. 1 Scope

¹ This Act regulates the broadcasting, processing, transmission and reception of radio and television programme services. Unless this Act provides to the contrary, the transmission of programme services using telecommunications techniques is based on the Telecommunications Act of 30 April 1997³ (TCA).

² Offerings of minor editorial importance do not fall under this Act. The Federal Council shall determine the criteria.

Art. 2 Definitions

In this Act:

- a. *programme service* means sequence of programmes which are offered continuously, defined in time and transmitted using telecommunications techniques and which are intended for the public;
- b. *programme* means part of a programme service which is self-contained in terms of form and content;
- c. *editorial programme* means a programme which is not advertising.

AS 2007 737

¹ SR 101

² BBI 2003 1569

³ SR 784.10

- d. *broadcaster* means the natural or legal person bearing responsibility for the creation of programmes or for the compilation thereof into a programme service;
- e. *Swiss programme service* means a programme service which is subject to Swiss sovereignty in accordance with the provisions of the European Convention on Transfrontier Television of 5 May 1989⁴; these provisions also apply, *mutatis mutandis*, to radio programme services;
- f. *transmission by means of telecommunications techniques* means the electrical, magnetic, optical or other electromagnetic sending or receiving of information by wire or radio (Art. 3 let. c TCA⁵);
- g. *broadcasting* means the transmission by means of telecommunications techniques and intended for the general public;
- h. *telecommunications service* means the transmission of information for third parties by means of telecommunications techniques (Art. 3 let. b TCA);
- i. *coupled service* means a telecommunications service which constitutes a functional unit with the programme service or which is necessary for the use of the programme service;
- j. *processing* means the operation of services or technical procedures for the transmission, bundling, encryption or marketing of programme services or for the selection thereof on reception equipment;
- k. *advertising* means any public statement in the programme service, the purpose of which is to promote the conclusion of transactions concerning goods or services, the support of a cause or idea, or the achievement of another effect desired by the advertiser or by the broadcaster and which is broadcast in return for payment or similar consideration or for self-promotion purposes.
- l. *offer for sale* means advertising which invites the public to directly conclude a transaction concerning the presented goods or services;
- m. *tele-shopping programme* means a programme which exclusively contains offers for sale and lasts for at least 15 minutes;
- n. *tele-shopping programme service* means a programme service which consists solely of offers for sale and other advertising;
- o. *sponsorship* means the participation of a natural or legal person in the direct or indirect financing of a programme, with a view to promoting their own name, their own trade mark or their own image.

⁴ SR 0.784.405

⁵ SR 784.10

Title 2: Broadcasting of Swiss Programme Services

Chapter 1: General Provisions

Section 1: Obligation to Notify and to Obtain a Licence

Art. 3

Anyone wishing to broadcast a Swiss programme service must:

- a. notify this in advance to the Federal Office of Communications (Federal Office); or
- b. possess a licence in accordance with this Act.

Section 2: Content Principles

Art. 4 Minimum requirements for programme service content

¹ All radio or television programmes must respect fundamental rights. In particular, programmes must respect human dignity, must be neither discriminatory nor contribute to racial hatred, nor endanger public morals nor glorify or trivialise violence.

² Editorial programmes with information content must present facts and events fairly, so that the audience can form its own opinion. Personal views and commentaries must be identifiable as such.

³ The programmes must not jeopardise the internal or external security of the Confederation or cantons, their constitutional order or the observance of Switzerland's obligations under international law.

⁴ Licensed programme services must appropriately express the variety of events and opinions in the totality of their editorial programmes. If a coverage area is served by an adequate number of programme services, the licensing authority may release one or more broadcasters in the licence from the variety obligation.

Art. 5 Programmes unsuitable for young people

Through the choice of transmission time or other measures, broadcasters must ensure that minors are not confronted by programmes which jeopardise their physical, mental, moral or social development.

Art. 6 Independence and autonomy

¹ Unless federal law provides otherwise, broadcasters are not bound by the instructions of federal, cantonal or communal authorities.

² In the design of their programme services, namely in the choice of themes, handling of content and representation, they are free and shall bear the responsibility therefor.

³ No-one may demand that a broadcaster broadcast specific presentations and information.

Art. 7 Other requirements for programme services of television broadcasters with a national or regional-language offering

¹ The Federal Council may require television broadcasters, within a framework of practical feasibility and with appropriate resources:

- a. to reserve a substantial proportion of the relevant broadcasting time for Swiss and other European works;
- b. to reserve an appropriate amount of broadcasting time or programme costs in their television programme services for the broadcasting of Swiss and European works by independent producers.

² Television broadcasters with a national or regional-language programme service which broadcast films in their programme service must spend at least 4 per cent of their gross revenue on the purchase, production or co-production of Swiss films or pay a corresponding support fee of maximum 4 per cent. This obligation also applies to broadcasters of a national or regional-language programme service window in a foreign television programme service which broadcasts films. However, it does not apply to the SRG SSR (Swiss Broadcasting Corporation).

³ Television broadcasters with a national or regional-language programme service must prepare an appropriate proportion of programmes in a form suitable for the hard of hearing and the visually impaired.

Art. 8 Publication obligations

¹ Swiss broadcasters must:

- a. insert in their programme services without delay urgent police messages which are indispensable to the maintenance of public order and safety or the safety of persons, as well as official alerts and instructions.
- b. inform the public of decisions of the Confederation which are published in accordance with Article 7 paragraph 3 of the Publication Act of 18 June 2004⁶ by means of extraordinary publication.

² The authority requiring the broadcasts in accordance with paragraph 1 is responsible for them.

³ When necessary, the Federal Council shall extend the obligations in paragraph 1 letter a to telecommunications service providers which broadcast programme services.

⁴ It shall ensure that the population is assured of information by radio in crisis situations. The licensing authorities regulate the details in the licences of the SRG SSR and of the radio broadcasters mentioned in Articles 38-43.

⁶ SR 170.512

Section 3: Advertising and Sponsorship

Art. 9 Identifiability of advertising

¹ Advertising must be clearly separated from the editorial part of the programme service and must be clearly identifiable as such. The Federal Council may prohibit those forms of advertising which jeopardise separation or identifiability or subject these forms to special provisions.

² The broadcaster's permanent editorial employees may not participate in its advertising programmes. Local and regional broadcasters with limited financial resources are excluded from this restriction.

Art. 10 Bans on advertising

¹ Advertising for the following is prohibited:

- a. tobacco goods;
- b.⁷ alcoholic beverages which are subject to the Alcohol Act of 21 June 1932⁸; the Federal Council shall impose further restrictions for the protection of health and young people;
- c. ...⁹;
- d. political parties, persons holding political office or candidates for such offices and matters which are the subject of a popular vote;
- e. religious beliefs and the institutions and persons representing them.

² The following are prohibited:

- a. advertising for therapeutic products in accordance with the Federal Act of 15 December 2000 on Therapeutic Products¹⁰;
- b. sales offerings for all therapeutic products and medical treatments.

³ Surreptitious advertising and subliminal advertising are prohibited.

⁴ Advertising which:

- a. disparages religious or political convictions;
- b. is misleading or unfair;
- c. encourages behaviour prejudicial to health, the environment or personal safety

is prohibited.

⁷ Amended in accordance with No. I of the Federal Act of 25 Sept. 2009, in force since 1 Feb. 2010 (AS **2010** 371 372; BBl **2008** 9105).

⁸ SR **680**

⁹ Repealed by No. I of the Federal Act of 25 Sept. 2009, with effect from 1 Feb. 2010 (AS **2010** 371 372; BBl **2008** 9105).

¹⁰ SR **812.21**

⁵The Federal Council may prohibit other advertising in order to protect health and young people.

Art. 11 Insertion and duration of advertising

¹ Advertising must as a principle be inserted between individual programmes and must be broadcast in blocks. The Federal Council determines when deviations from this principle are possible. Deviations may not prejudice the integrity and the value of the programme concerned.

² Advertising may not in principle occupy more than 15 per cent of the daily transmission time of a programme service or 20 per cent of one hour's transmission time. The Federal Council shall determine the exceptions.

³ When determining deviations from the principles in paragraphs 1 and 2, the Federal Council shall notably take into account the following criteria:

- a. broadcasters' performance mandates;
- b. the economic situation of radio and television;
- c. transfrontier competition;
- d. international regulations on advertising;
- e. the concerns of the audience.

Art. 12 Sponsorship

¹ The content and scheduling of sponsored programmes fall within the exclusive responsibility of the broadcaster. The latter shall ensure that the sponsor does not influence the programme in a manner which adversely affects editorial independence.

² If programmes or sequences of programmes are sponsored in whole or in part, the sponsors must be named at the beginning or end of each programme.

³ Sponsored programmes may neither encourage the conclusion of transactions concerning goods or services of the sponsors or of third parties nor may they contain statements of an advertising nature concerning goods and services.

⁴ Programmes may not be financed by sponsors who primarily manufacture or sell products or offer services for which advertising is banned under Article 10. Companies active in the area of therapeutic products may sponsor programmes provided no products for which advertising is banned are named or shown and no advertising effect is created for these products in some other way.

⁵ News programmes and programmes on political current events, as well as programmes and sequences of programmes which are related to the exercise of political rights in the Confederation, cantons and communes may not be sponsored.

Art. 13 Protection of minors

¹ Advertising which is aimed at minors or in which minors appear may neither exploit their lack of life experience nor harm them in their physical or mental devel-

opment. The Federal Council shall impose corresponding regulations on the form of the advertising.

² Programmes for children may not be interrupted by advertising.

³ Offers for sale may not be directed at minors.

⁴ In order to safeguard the concerns mentioned in paragraph 1, the Federal Council excludes specific forms of sponsorship of children's programmes.

Art. 14 Special provisions for the SRG SSR

¹ Advertising is prohibited in the radio programme services of the SRG SSR. The Federal Council may provide for exceptions for self-promotion.

² ...¹¹

³ The Federal Council may partially or wholly restrict advertising and sponsorship in the SRG SSR's radio and television programme services as well as in other editorial offerings which are necessary for the fulfilment of its programme service mandate and which are financed from reception fees (Art. 25 para. 3 let. b).

Section 4:
Notification, Information, Reporting and Recording Obligations

Art. 15 Notification of revenue from advertising and sponsorship

Licensed broadcasters of Swiss programme services must notify the Federal Office of the gross revenue from advertising and sponsorship.

Art. 16 Notification of holdings

Broadcasters of Swiss programme services must notify the Federal Office of any changes in capital and in voting rights as well as any substantial holdings in other enterprises.

Art. 17 Obligation to provide information

¹ Broadcasters are obliged to provide the licensing and supervisory authorities free of charge with the information and to produce the documents that the authorities require within the framework of their supervisory activity and the measures against media concentration (Art. 75).

² The obligation to provide information also applies to legal and natural persons:

- a. in which the broadcaster has a substantial holding or which have a substantial holding in the broadcaster and which are active in the radio and television market or related markets;

¹¹ Repealed by No. I of the Federal Act of 25 Sept. 2009, with effect from 1 Feb. 2010 (AS 2010 371 372; BBl 2008 9105).

- b. which canvass for advertising or sponsorship for the broadcaster;
- c. which produce a major part of the programme service concerned for the broadcaster;
- d. which organise a public event in accordance with Article 72;
- e. which are active in the radio and television market and which occupy a dominant position in one or more media-related markets.

³ The right to refuse to provide information or produce documents is governed by Article 16 of the Federal Act of 20 December 1968 on Administrative Procedure (APA)¹².

Art. 18 Annual report and annual accounts

¹ Broadcasters of Swiss programme services must submit an annual report and annual accounts to the Federal Office. The Federal Council exempts certain categories of broadcasters from these obligations.

² The Federal Office may publish information from broadcasters' annual reports.

³ The Federal Council determines what the annual report and annual accounts must contain and which information the Federal Office may publish.

Art. 19 Statistical information

¹ The Federal Office produces statistics in cooperation with the Federal Statistical Office. These contain the information which the competent authorities require:

- a. for legislation and the application of the law;
- b. in order to acquire an overview of the market.

² Broadcasters of Swiss programme services must submit the necessary information to the Federal Office regularly.

³ The Federal Office may make statistical results available to the public.

⁴ The Federal Council regulates the details; in particular, it lays down the principles regarding data collection, individual surveys, the use of the collected data and the publication of statistical results.

Art. 20 Recording and retention of programmes

¹ Broadcasters of Swiss programme services must record all programmes and the recordings as well as the relevant material and documentation must be kept for at least four months. The Federal Council may exempt certain categories of broadcasters from this obligation.

² If a complaint is lodged against one or more programmes within four months or an objection is raised or an official supervisory procedure is opened, the recordings, materials and documentation must be retained until the completion of the procedure.

¹² SR 172.021

Art. 21 Conservation of programme services

¹ The Federal Council may require Swiss broadcasters to keep recordings of their programme services available so that these remain permanently conserved for the public. Broadcasters may be financially compensated for the resulting costs.

² The Federal Council determines which programme services must be conserved and regulates the compensation of broadcasters as well as the delivery, archiving and availability of recordings. In particular, it may issue technical regulations concerning the nature and format of the data media and designate the bodies which coordinate the necessary work and select the programme services to be conserved.

³ The expenditure of the bodies under paragraph 2 as well as the compensation for broadcasters in accordance with paragraph 1 is financed from general federal resources, in so far as the revenue from the charge for consulting the recorded programme services and for their continued use and the revenue from licence fees are not sufficient.

⁴ In order to assure the long-term use of the archives, the Federal Council may take support measures for the conservation of the corresponding playback equipment.

Section 5: Licence Fee**Art. 22**

¹ Licensed broadcasters of Swiss programme services pay an annual fee for their licence. The revenue from the fee is used primarily to promote research projects in the radio and television sector (Art. 77) and to finance archiving (Art. 21) and secondarily for new technologies (Art. 58).

² The fee amounts to a maximum of 1 per cent of the gross revenue from advertising and sponsorship. The Federal Council determines the amount of the fee and an exemption amount.

Chapter 2: Swiss Broadcasting Corporation (SRG SSR)**Section 1: Programme Service Mandate and Licence****Art. 23** Principle

The SRG SSR provides a service for the community. In so doing, it does not attempt to make a profit.

Art. 24 Programme service mandate

¹ The SRG SSR fulfils the constitutional mandate in the area of radio and television (the programme service mandate). In particular:

- a. it supplies the entire population comprehensively in terms of content with equivalent radio and television programme services in the three official languages;
- b. it promotes understanding, cohesion and exchange between the parts of the country, linguistic communities, cultures and social groupings and takes account of the particularities of the country and the needs of the cantons;
- c. it promotes closer links between Swiss citizens living abroad and their home country and it promotes Switzerland and the understanding of its concerns abroad.

² The SRG SSR broadcasts at least one radio programme service for Romansh-speaking Switzerland. The Federal Council also lays down the principles in accordance with which the radio and television needs of this linguistic region must additionally be taken into consideration.

³ The Federal Council lays down the principles in accordance with which the needs of people with sensory disabilities must be taken into consideration. In particular, it determines the extent to which special programmes must be provided in sign language for the deaf.

⁴ The SRG SSR contributes to:

- a. free public opinion-forming through comprehensive, diverse and accurate information especially regarding political, economic and social matters;
- b. cultural diversity and the reinforcement of the country's cultural values as well as the promotion of Swiss culture, with particular emphasis on Swiss literature and Swiss music and film, especially by broadcasting Swiss productions and programmes it has produced itself;
- c. education of the public, especially through the regular broadcasting of programmes with educational content;
- d. entertainment.

⁵ The standard language is generally to be used in important information broadcasts which are of interest beyond the linguistic and national borders.

Art. 25 Licence

¹ The Federal Council awards the SRG SSR a licence.

² A public consultation is held before the award of the licence or before changes to the licence with consequences for media policy.

³ The licence determines in particular:

- a. the number and nature of radio and television programme services;
- b. the scope of the further editorial offering which is necessary to fulfil the programme mandate at the level of the linguistic region, as well as at national and international level and which is financed from reception fees;

- c. the details of the inclusion of Swiss literature, music and film in accordance with Article 24 paragraph 4 letter b; it may set down corresponding minimum quotas.
- ⁴ The SRG SSR may offer certain programme services in cooperation with other broadcasters. The cooperation is regulated in agreements which require the consent of the Federal Department of the Environment, Transport, Energy and Communications (the Department).
- ⁵ The Department may amend individual provisions of the licence before its term expires if the actual or legal conditions have changed and the amendment is necessary to safeguard important interests. The SRG SSR will be paid appropriate compensation.
- ⁶ The Department may restrict the SRG SSR's licence or partially suspend it if:
- a. the supervisory authority has made an application in accordance with Article 89;
 - b. the SRG SSR has repeatedly or seriously violated its obligations regarding financial management and accounting (Art. 35 and 36).

Section 2: Editorial Offering

Art. 26 Restrictions of the regional offering

- ¹ The SRG SSR is prohibited from broadcasting regional programme services.
- ² The SRG SSR may with the approval of the Department insert time-limited regional windows in its radio programme services. Sponsorship is prohibited in such windows.

Art. 27 Programme production

The SRG SSR's programme services shall be produced predominantly in the language regions for which they are intended.

Art. 28 Editorial offering for foreign countries

- ¹ The Federal Council shall periodically agree with the SRG SSR the scope of the editorial offering for foreign countries in accordance with Article 24 paragraph 1 letter c and the corresponding costs.
- ² In crisis situations, the Federal Council may agree with the SRG SSR special short-term performance mandates for purposes of international understanding.
- ³ At least half the costs for services in accordance with paragraph 1 will be reimbursed to the SRG SSR by the Confederation; the costs for services in accordance with paragraph 2 will be reimbursed in full.

Section 3: Unlicensed Activities

Art. 29

¹ The SRG SSR and enterprises controlled by it must report in advance to the Federal Office activities which are not laid down in the licence and which may adversely affect the position and mission of other Swiss media enterprises.

² If such activity adversely affects the fulfilment of the programme service mandate or substantially limits the development potential of other media enterprises, the Department may impose conditions on commercial activity, financing, separation of accounting and organisational separation or prohibit the activity.

Section 4: Broadcasting of SRG SSR Programme Services

Art. 30

¹ The radio and television programme services of the SRG SSR shall be broadcast at least over the entire linguistic region concerned. At least one SRG SSR radio and television programme service shall be broadcast throughout Switzerland in German, French and Italian. The Federal Council may provide for exceptions. It also takes into consideration the needs of the Romansh-speaking population in accordance with Article 24 paragraph 2. In doing so, it ensures that frequencies and channels are made available to the other broadcasters for each means of broadcasting.

² For each programme service, the Federal Council determines the coverage area and technical means of broadcasting.

Section 5: Organisation and Finance

Art. 31 Organisation of the SRG SSR

¹ The SRG SSR shall organise itself so that:

- a. its autonomy and independence from the state and from social, economic and political groupings is guaranteed;
- b. it is managed economically and the reception fees are used for the purpose for which they were intended;
- c. the concerns of the linguistic regions are taken into consideration and national leadership and coordination is assured;
- d. the public is represented in the organisation;
- e. editorial activity is separate from economic activities;
- f. it can be managed, supervised and inspected in accordance with the principles of the law on companies limited by shares.

² Its articles of association must be approved by the Department.

Art. 32 Management bodies

¹ The mandatory management bodies are the General Assembly, the Board of Directors, the auditor and the Executive Board.

² Unless this Act provides otherwise, the provisions of the law on companies limited by shares apply *mutatis mutandis* to the provisions of the articles of association on the rights, obligations and responsibilities of the SRG SSR management bodies.

Art. 33 Board of Directors

¹ The Federal Council may nominate up to a quarter of the members of the Board of Directors.

² The Board of Directors does not issue individual directives in matters related to current programme services.

³ The members of the Board of Directors must not be employed by the SRG SSR or any of the enterprises controlled by it. They are not bound by instructions.

Art. 34 Finance

The SRG SSR is mainly financed by reception fees. Other sources of finance are available to it, unless this is restricted by this Act, the Ordinance, the licence or relevant international law.

Art. 35 Use of financial resources

¹ The SRG SSR and the enterprises controlled by it shall conduct their financial accounting in accordance with the recognised principles of best practice. They shall conduct themselves cost-effectively, use their resources in accordance with the provisions and ensure the long-term maintenance of their assets with regard to the fulfilment of their mandate.

² The SRG SSR shall use the proportion of fees allocated to it solely to cover the costs resulting from the broadcasting of radio and television programme services and the costs of the other editorial offerings (Art. 25 para. 3 let. b).

³ If it ceases to carry out an activity that was a major element when the fees were set, the Department may oblige the SRG SSR to build up reserves in the amount of the corresponding sum, which will be taken into account during the subsequent fee adjustment.

⁴ The Federal Council shall ensure that the provisions of Article 6a paragraphs 1–5 of the Federal Personnel Act of 24 March 2000¹³ are applied accordingly in the SRG SSR and in the enterprises controlled by it for the members of the managing bodies, members of management staff and other personnel who are remunerated in a similar way.

¹³ SR 172.220.1

Art. 36 Financial supervision

¹ The SRG SSR and the enterprises controlled by it shall maintain their books in accordance with the regulations which apply to companies limited by shares and in accordance with the accounting standards recognised by the Swiss stock exchanges.

² It shall maintain separate accounts for the activities involved in carrying out their mandate under the terms of the licence and for their other activities.

³ The Board of Directors of the SRG SSR shall communicate the following to the Department yearly:

- a. the group accounts;
- b. the annual accounts, the preliminary estimate, the financial plan and the annual report of the SRG SSR and of the enterprises controlled by it.

⁴ The Department shall audit the SRG SSR's financial accounting on the basis of the reports from the Board of Directors. It may demand additional information. In particular, the Department may demand of the SRG SSR's Board of Directors or of the senior management bodies of controlled enterprises information on how they have discharged their responsibility.

⁵ The Department may carry out audits on the premises of the SRG SSR and the enterprises controlled by it if:

- a. reporting is inadequate and the SRG SSR does not provide adequate information within the required time despite a request by the Department; or
- b. there are well-founded suspicions that the SRG SSR or one of the enterprises controlled by it has not fulfilled the obligations stated in Article 35 paragraph 1.

⁶ Subject to the requirements of paragraph 5, the Department may entrust the Federal Audit Office or other experts with the financial audit. The Federal Audit Office Act of 28 June 1967¹⁴ is not applicable.

⁷ Audits on grounds of pure expediency are not permitted.

Art. 37 Holdings in other broadcasting companies

SRG SSR holdings in other broadcasters are subject to the approval of the Department.

Chapter 3: Other Broadcasters with a Mandate**Section 1: Licences with a Mandate and Fee-Splitting****Art. 38** Principle

¹ Licences with a performance mandate and fee-splitting (fee-splitting licences) may be awarded to broadcasters of local-regional programme services which:

¹⁴ SR 614.0

- a. provide to an area that has no adequate financing possibilities radio and television programme services which take account of local or regional particularities by providing comprehensive information, particularly on political, economic and social matters and which contribute to the development of cultural life in the coverage area;
- b. contribute to the fulfilment of the mandate under the Federal Constitution in urban areas by means of complementary, non-profit-orientated radio programme services.

² Fee-splitting licences give an entitlement to broadcast the programme service within a specific coverage area (right of access) and to a proportion of the revenue from reception fees.

³ One fee-splitting licence is awarded for each coverage area.

⁴ The licence specifies as a minimum:

- a. the coverage area and the technical means of broadcasting;
- b. the required programme services and the operational and organisational requirements necessary for these;
- c. other requirements and conditions which the licensee must fulfil.

⁵ The broadcasting of a programme service on the basis of a fee-splitting licence is in principle restricted to the coverage area concerned; the Federal Council may provide for exceptions.

Art. 39 Coverage areas

¹ After consultation with the Federal Communications Commission, the Federal Council determines the number and extent of the coverage in which fee-splitting licences are awarded, as well as the technical means of broadcasting in the coverage area concerned. When it does so, it distinguishes between coverage areas for radio and for television.

² Coverage areas in accordance with Article 38 paragraph 1 letter a must be defined so that:

- a. they constitute a political and geographical unit or are marked by especially close cultural or economic contacts; and
- b. their existing financing possibilities together with an appropriate proportion of the revenue from reception fees allow the broadcaster to fulfil its performance mandate.

³ Exceptions may be made for regional programme services which are broadcast in at least two national languages in a multilingual area.

⁴ The number and extent of the coverage areas are examined by the Federal Council periodically but after ten years at the latest. The Department may make minor adjustments to the extent.

⁵ Before defining the coverage areas and before significant changes, the cantons and the licensed broadcasters directly concerned shall be consulted.

Art. 40 Share of fees

¹ The share of the fees amounts to 4 per cent of the revenue from radio reception fees for fee-splitting radio broadcasters and 4 per cent of the revenue from television reception fees for fee-splitting television broadcasters. When it determines the amount of the reception fee (Art. 70), the Federal Council determines the share that is available for this purpose as well as the maximum percentage which the contribution may make to the operating costs of the individual broadcaster.

² The Department lays down each licensee's share of the revenue from reception fees for a specific period. It takes into consideration the size and economic potential of the coverage area as well as the expenditure which the licensee must incur to fulfil the performance mandate including transmission costs.

³ The provisions of the Subsidies Act of 5 October 1990¹⁵ are applicable.

Art. 41 Obligations of broadcasters with fee-splitting licences

¹ Broadcasters which possess a fee-splitting licence must fulfil the performance mandate defined in the licence. In order to ensure the fulfilment of the performance mandate and of independent programme production, the Federal Council may impose other obligations. In particular, it may oblige the broadcasters to produce a mission statement and editorial statutes.

² Broadcasters with a fee-splitting licence must use the financial resources economically and in accordance with the regulations. Distribution of profits is not permitted. Broadcasting of the fee-supported programme service must be separated in the accounts from any other economic activities of the licensee. If an undertaking which is economically controlled by the licensee carries out activities in connection with the programme, the licensee shall ensure that these activities are kept separate in the accounts from other activities.

³ Cooperation with other broadcasters must not jeopardise the fulfilment of the performance mandate or the independence of programme production.

Art. 42 Financial supervision

¹ The licensee shall submit the accounts to the Federal Office on an annual basis. The latter shall examine whether the financial resources have been used economically and in accordance with the regulations. If not, it may reduce or reclaim proportions of fees from a licensee.

² The Federal Office may also request information from the licensee and from those obliged to provide information in accordance with Article 17 paragraph 2 letter a–c and carry out on-the-spot financial audits.

³ Audits on grounds of pure expediency are not permitted.

¹⁵ SR 616.1

Section 2: Licence with Mandate and without Fee-Splitting

Art. 43

¹ The Department may award other broadcasters a licence for wireless terrestrial broadcasting of a programme service if this programme service:

- a. takes account of local or regional particularities in an area by means of comprehensive information, particularly concerning political, economic and social matters and contributes to the development of cultural life in the coverage area;
- b. contributes to a significant extent in a linguistic region to the fulfilment of the performance mandate provided for by the Constitution.

² The licence defines the scope of access to technical means of broadcasting and the performance mandate with regard to programme services. The Department may impose other obligations in order to ensure the fulfilment of the performance mandate and the independence of programme production.

Section 3: Licensing Regulations

Art. 44 General licence requirements

¹ A licence may be awarded if the candidate:

- a. is able to fulfil the performance mandate;
- b. credibly demonstrates that it can finance the necessary investments and operation;
- c. demonstrates to the licensing authority the identity of the majority holder of its capital and who makes substantial financial resources available to it;
- d. guarantees that it complies with the employment law regulations and the working conditions of the industry, the applicable law and in particular the obligations and conditions associated with the licence;
- e. separates editorial activity from economic activities;
- f. is a natural person with residence in Switzerland or a legal person domiciled in Switzerland;
- g. does not jeopardise the diversity of opinion and offerings.

² In the absence of any international obligations to the contrary, a legal person controlled from abroad, a domestic legal person with foreign participation or a natural person without Swiss citizenship may be refused the licence if the corresponding foreign state does not guarantee reciprocal rights to a similar extent.

³ A broadcaster or the enterprise to which it belongs may acquire a maximum of two television licences and of two radio licences.

Art. 45 Licensing procedure

¹ Licences are awarded by the Department. As a rule, the Federal Office puts the licences out to tender; it may consult interested parties.

² The Federal Council may provide for a special procedure for the award of short-term licences.

³ If there are several candidates for one licence, preference is given to the candidate that is best able to fulfil the performance mandate. If several candidates are essentially equivalent from this viewpoint, preference is given to the candidate which best enhances the diversity of opinion and the diversity of offerings.

⁴ Licences for wireless terrestrial transmission of programme services are as a rule awarded before the invitation to tender for the corresponding radiocommunication licences in accordance with Article 24 TCA¹⁶.

Art. 46 Term and expiry of licences

¹ Each licence is awarded for a specific term. As a rule, comparable licences are limited to the same term.

² A licence expires in the case of relinquishment by the broadcaster, on withdrawal and on expiry of its term.

Art. 47 Fulfilment of the performance mandate

¹ The Federal Office examines whether the licensed programme service fulfils the performance mandate. For purposes of clarification, it may call in external expertise or experts.

² If it finds substantial shortcomings, it takes measures. It may notably reduce the claim to shares of fees by up to half until the shortcomings are remedied.

Art. 48 Transfer of the licence

¹ A transfer of the licence must be notified to the Department before it takes place and must be approved by the latter.

² The Department examines whether the licence requirements are also met after the transfer. It may refuse approval within three months of receipt of notification; in particular cases the period may be extended.

³ Economic transfer of the licence is also deemed to be a transfer. Such a case applies if more than 20 per cent of the share capital, nominal capital or registered capital or where applicable the participating capital or voting rights are transferred.

¹⁶ SR 784.10

Art. 49 Amendment of the licence

¹ The Department may amend individual provisions of the licence before its term expires if the actual or legal conditions have changed and the amendment is necessary to safeguard important public interests.

² The licensee is appropriately compensated if the amendment substantially restricts the rights granted with the licence. It receives no compensation if the amendment is based on important national interests or on a change in international obligations.

³ At the request of the broadcaster, the Department may amend individual conditions if the amendment applied for corresponds to the requirements for the award of the licence.

Art. 50 Restriction, suspension and withdrawal of the licence

¹ The Department may restrict, suspend or withdraw the licence if:

- a. the licensee has acquired it as a result of incomplete or incorrect information;
- b. the licensee seriously violates this Act or its implementing provisions;
- c. the licensee continuously fails to meet its obligations laid down in the licence despite measures under Article 47 paragraph 2;
- d. the licensee seriously exploits the licence for unlawful purposes;
- e. important national interests so require.

² The Department shall withdraw the licence if essential conditions relating to the award thereof are no longer applicable.

³ The licensee has a claim to compensation if the Department:

- a. withdraws the licence because essential conditions relating to the award thereof cease to exist and the Confederation is responsible for this;
- b. suspends or withdraws the licence because important national interests so require.

Title 3: Transmission and Technical Processing of Programme Services

Chapter 1: General Rules

Art. 51 Principle

¹ Broadcasters may broadcast their programme services themselves on the basis of the provisions of telecommunications law or commission a telecommunications service provider to broadcast the programme services.

² The broadcasting services are provided on fair, reasonable and non-discriminatory terms.

³ Article 47 TCA¹⁷ concerning communication in extraordinary situations is applicable to broadcasters which transmit their programme services themselves.

Art. 52 Restrictions

¹ The Federal Office may restrict or prohibit the transmission of a programme service using telecommunications techniques if the programme service:

- a. infringes international telecommunications law which is binding on Switzerland;
- b. seriously and continuously violates the international regulations which are binding on Switzerland regarding programme content, advertising or sponsorship; or
- c. is the subject of a ban on broadcasting in accordance with Article 89 paragraph 2.

² Both the broadcaster of the programme service in question and the telecommunications service provider which broadcasts the programme service or feeds the signal for broadcasting may object to the decision of the Federal Office.

³ Programme services of broadcasters with a fee-splitting licence may not be broadcast outside the area specified in the licence (Art. 38 paragraph 5).

Chapter 2: Wireless Terrestrial Broadcasting of Programme Services

Art. 53 Access-entitled programme services

The following are access-entitled for wireless terrestrial broadcasting within the framework of the licence:

- a. the programme services of the SRG SSR;
- b. the programme services of broadcasters which possess a licence with a performance mandate.

Art. 54 Frequencies for programme services

¹ The Federal Communications Commission shall ensure that sufficient frequency capacities are available to fulfil the performance mandate of radio and television (Art. 93 para. 2 FC) in accordance with constitutional law. In particular, it shall ensure that access-entitled programme services can be transmitted using wireless terrestrial technology in the intended coverage area.

² For frequencies or frequency blocks which are used in accordance with the national frequency allocation plan (Art. 25 TCA¹⁸) for the broadcasting of radio and television programme services, it determines:

¹⁷ SR 784.10

¹⁸ SR 784.10

- a. the broadcasting area;
- b. the number of radio or television programme services which are to be broadcast, or the transmission capacities which are to be reserved for the broadcasting of programme services.

³ It ensures that sufficient broadcasting of programme services can be assured to serve the population in extraordinary situations.

⁴ The Federal Council determines the principles which are applicable to the fulfilment of the tasks in accordance with paragraphs 1–3.

Art. 55 Broadcasting obligation and broadcasting conditions

¹ Anyone acquiring a radiocommunication licence for the utilisation of a frequency which is intended for the broadcasting of an access-entitled programme service must broadcast the latter in adequate quality and respect the provisions of the licence with regard to programme services and of the radiocommunication licence with regard to telecommunications law.

² Broadcasters pay the owner of a radiocommunication licence cost-based compensation for the broadcasting of access-entitled programme services. The Federal Council determines the chargeable costs. If the radiocommunication licence is awarded in a bidding procedure, the award price as mentioned in Article 39 paragraph 4 TCA¹⁹ is not included in the chargeable costs.

³ The Federal Council may extend the transmission obligation to services which are coupled with access-entitled programme services.

Art. 56 Procedures for agreement and decision making

¹ If the parties cannot agree on the broadcasting obligation and broadcasting conditions within three months, the Federal Office adjudicates.

² For the decision, it refers to comparable domestic or foreign reference values in so far as the parties do not produce evidence which justifies deviation therefrom.

³ For the period from the submission of the application to the legally-enforceable decision, it may order transmission on an interim basis and fix the financial conditions.

⁴ The procedure and the obligation to provide information are based, *mutatis mutandis*, on the provisions of the TCA on the granting of access by dominant providers (Art. 11, 11a and 11b TCA²⁰).²¹

Art. 57 Support for the broadcasting of radio programme services

¹ In accordance with Article 38 paragraph 1 letter a, the Federal Office provides a contribution to a broadcaster with a fee-splitting licence which incurs additional

¹⁹ SR 784.10

²⁰ SR 784.10

²¹ See also art. 106 No. 1 below.

expense for the wireless terrestrial broadcasting of its radio programme service in a mountain region.

² The Federal Council regulates the conditions and calculation criteria in accordance with which the Federal Office pays the contributions.

Art. 58 Investment contributions for new technologies

¹ The Federal Office may arrange for licensed broadcasters to receive investment contributions to the costs which are incurred as part of the introduction of new technologies for building transmitter networks; it is a precondition that adequate financing possibilities are not available in the corresponding coverage area.

² The contributions are paid from the licence fee revenue (Art. 22) and, if this is not sufficient, from the revenue from reception fees.

³ When determining the amount of the reception fee (Art. 70), the Federal Council determines the proportion which is available for this purpose. This is a maximum of one per cent of the total revenue from reception fees.

⁴ The Federal Council lays down the criteria for the investment contributions.

Chapter 3: Broadcasting by Wire

Art. 59 Access-entitled and foreign programme services

¹ In their coverage area, the following must be broadcast by wire:

- a. programme services of the SRG SSR within the framework of the licence;
- b. programme services based on a licence with a performance mandate.

² The Federal Council may also specify programme services of foreign broadcasters which are to be transmitted by wire because of their special contribution to education, cultural development or free opinion-forming.

³ The Federal Council determines the maximum number of access-entitled programme services in accordance with paragraphs 1 and 2 within the framework of the technical capabilities of telecommunications service providers. The programme services are to be transmitted free of charge and in adequate quality.

⁴ The telecommunications service provider which already broadcasts programme services in the coverage area and reaches the most households is primarily subject to the broadcasting obligation. Within the same coverage area, the Federal Office may require more than one telecommunications service provider if this is necessary to ensure that a programme service can be received by the general public. In the event of refusal, the Federal Office may arrange immediate broadcasting by way of precaution.

⁵ If compliance with this obligation leads to an unreasonable economic burden on the telecommunications service provider, the Federal Office shall require the access-entitled broadcaster to pay appropriate compensation.

⁶ The Federal Council may extend the transmission obligation to services which are coupled with access-entitled programme services.

Art. 60 Other broadcasting obligations

¹ On application by a broadcaster, the Federal Office shall require a telecommunications service provider for a specific period to provide broadcasting by wire of a programme service within a specific area, if:

- a. the programme service contributes to a significant extent to the fulfilment of the mandate under the Constitution; and
- b. broadcasting can reasonably be expected from the telecommunications service provider taking account of the available transmission capacities and its economic capacity.

² The Federal Council determines the maximum number of programme services.

³ The Federal Office may withdraw the right prior to expiry of the decreed term if the broadcaster no longer provides the services stated in the decision.

⁴ The Federal Council may extend the transmission obligation to services which are coupled with access-entitled programme services.

Art. 61 Transmission by wire of other programme services

In the case of the broadcasting of programme services not regulated by Articles 59 and 60, the telecommunications service provider decides on the basis of its capacities for transmitting programme services. In particular, the economic benefit of the broadcasting service to the broadcaster may be taken into account in the payment of the broadcasting costs.

Art. 62 Channel occupancy

The Federal Council may decree that telecommunications service providers broadcast the programme to be transmitted in accordance with Article 59 paragraphs 1 and 2 on preferred channels.

Chapter 4: Technical Processing of Programme Services

Art. 63 Principles

¹ Access to technical processing must be guaranteed to broadcasters on fair, reasonable and non-discriminatory terms. If processing using the telecommunications service provider's equipment essentially corresponds to the state of the art, the broadcaster is not entitled to use its own equipment for processing.

² Anyone providing services as a higher-level user interface which control programme service selection must use the state of the art to ensure that reference is clearly made in the first stage of use to access-entitled programme services.

- ³ Operators and providers of processing services or equipment must:
- a. provide third parties with a justified interest with all information and disclose all documentation, the knowledge of which is necessary to enforce the rights in paragraph 1;
 - b. provide the Federal Office on its request with all information and submit all documentation which is necessary to verify whether the obligations in the provisions on technical processing are being complied with.
- ⁴ The Federal Council may extend the provisions on technical processing to coupled services.
- ⁵ If no regulations exist for specific circumstances, the Federal Office shall in individual cases take the decisions required to safeguard diversity of opinion and diversity of offerings.

Art. 64 Open interfaces and technical configuration

In so far as is necessary to safeguard diversity of opinion, the Federal Council may, after consultation with the parties concerned, stipulate open interfaces or decree other provisions concerning their technical configuration for equipment or services which are used for processing of programme services. In so doing, it takes account of the equipment or services already on the market and allows appropriate transitional periods.

Art. 65 Unbundling

¹ Anyone offering programme services as bundled packages or providing services which are used for the processing of programme services must fulfil the technical requirements that enable third parties to broadcast these programme services individually under cost-effective conditions and use the equipment or services individually.

² The Federal Council may decree regulations relating to unbundling in so far as this is necessary to safeguard diversity of opinion.

Title 4: Reception of Programme Services

Chapter 1: Freedom of Reception

Art. 66 Free programme service reception

Everyone is free to receive programme services broadcast within Switzerland and from abroad if they are intended for a general audience.

Art. 67 Cantonal bans on antennas

¹ The cantons may in specific areas prohibit the erection of outdoor antennas if:

- a. this is necessary for the protection of significant local and national landscapes, historical sites or natural and art monuments; and
- b. reception of the customary programme services in the region remains guaranteed under acceptable conditions.

² The erection of an outdoor antenna for the reception of additional programme services must be approved by way of exception if the interest in receiving the programme services overrides the interest in protecting the local and national landscape.

Chapter 2: Reception Fees**Art. 68** Obligation to pay fees and to notify

¹ Anyone who has a device suitable for the reception of radio and television programme services (a receiver) that is ready for or in operation must pay a reception fee. The Federal Council determines which categories of equipment are deemed to be suitable for reception and determines in particular the conditions under which equipment which is also suitable for other applications (multi-functional devices) is subject to the obligation to pay fees and to notify.

² The reception fee is charged only once per household or business premises regardless of the number of receivers.

³ Anyone who has a receiver that is ready for or in operation must notify the fee collection agency in advance. Changes in the circumstances which require notification must also be notified.

⁴ The obligation to pay fees starts on the first day of the month following that in which the receiver becomes ready for operation or is operated.

⁵ It ends with the last day of the month in which all receivers cease to be ready for operation or to be operated, but not before the end of the month in which this has been notified to the fee collection agency.

⁶ The Federal Council determines the details. It may exempt certain categories of persons from the obligation to pay fees and to notify.

Art. 69 Fee collection agency

¹ The Federal Council may delegate the collection of reception fees and associated tasks to an independent organisation (the fee collection agency). It is deemed to be an authority as defined by Article 1 paragraph 2 letter e APA²² and Article 79 of the Federal Act of 11 April 1889 on Debt Collection and Bankruptcy²³ and is able to issue official decisions. For the purposes of clarification of the obligation to pay fees

²² SR 172.021

²³ SR 281.1

and to notify it may process sensitive personal data. If there is any suspicion of a violation of the obligation to notify, it files a report with the Federal Office.

² The fee collection agency may request that the cantons and communes provide the surname, forename, address, age group and household composition of the residents in list form on electronic data carriers. It must pay for the additional costs incurred as a result of its request.

³ It may use this data only for verifying compliance with the obligation to notify and for the collection of reception fees. It must not forward the data to third parties; the Federal Council may provide for exceptions.

⁴ The fee collection agency takes the organisational and technical measures to secure the data against unauthorised processing.

⁵ The Federal Office exercises supervision over the fee collection agency and deals with complaints against its decisions.

Art. 70 Amount of the reception fee

¹ The Federal Council shall determine the amount of the reception fee. In so doing, it takes account of the need for:

- a. financing for the programme services of the SRG SSR and the other public offerings of the SRG SSR which are necessary to fulfil the mandate (Art. 25 para. 3 let. b);
- b. support for programme services with a fee-splitting licence (Art. 38);
- c. the tasks in relation to the collection of reception fees and the enforcement of the obligation to notify and pay fees;
- d. support for the foundation for audience research (Article 81 para. 1);
- e. the construction of transmitter networks as part of the introduction of new technologies (Art. 58).

² It may set different fees for private and professional reception and for the commercial exploitation of the possibility of receiving programme services.

³ When making its decision, it considers the recommendations of the Price Inspector. Deviations from the recommendations must be publicly justified.

⁴ The proceeds and the manner of use of the fees are not shown in the national federal accounts.

Art. 71 Fees for wireless terrestrial reception

The cantons may provide for fees for the reception of radio and television programme services which are transmitted using wireless terrestrial technology on the basis of a public supply contract.

Title 5: Measures to Safeguard Diversity and promote Programme Service Quality

Chapter 1: Ensuring Access to Public Events

Art. 72 Short reporting right with regard to public events

¹ If the reporting of a public event in Switzerland is restricted by exclusive agreements, any interested broadcaster has the right to short, up-to-date, media-compatible reporting of this event.

² The organiser of a public event and the broadcaster benefiting from first exploitation or exclusive rights are obliged to provide any interested broadcaster with the possibility of short reporting.

³ They shall give interested broadcasters:

- a. access to the event, in so far as technical and spatial circumstances permit; and
- b. the desired parts of the transmission signal under appropriate conditions.

⁴ With reference to Article 90, the Federal Office may order organisers of a public event and broadcasters with first or exclusive rights to take appropriate measures to ensure exercise of the right of short reporting.

Art. 73 Free access to events of major importance to society

¹ Reporting of events of major importance to society must be made freely accessible to a substantial proportion of the general public.

² The Department drafts a list of international and national events of major importance to society and updates it regularly.

³ For broadcasters of Swiss television programme services, the lists drafted by the member states of the European Convention on Transfrontier Television of 5 May 1989²⁴ are binding in the state concerned with regard to free access.

Chapter 2: Measures against Media Concentration

Art. 74 Risks to diversity of opinion and offerings

¹ A risk to diversity of opinion and offerings exists if:

- a. a broadcaster abuses its dominant position in the relevant market;
- b. a broadcaster or another enterprise active in the radio and television market abuses its dominant position in one or more media-related markets.

² The Department consults the Competition Commission to assess the dominant position as defined in Article 4 paragraph 2 of the Cartel Act of 6 October 1995²⁵. The latter may publish its comments.

Art. 75 Measures

¹ If, after obtaining the Competition Commission's report, the Department ascertains that a broadcaster or another undertaking active in the radio and television market has jeopardised diversity of opinion and offerings as a result of its abuse of its dominant position, it may take measures in the area of radio and television. As a rule, it takes a decision within three months of receipt of the report.

² It may demand that the broadcaster or the undertaking concerned:

- a. ensures diversity by measures such as granting broadcasting time for third parties or cooperating with other participants in the market;
- b. takes measures against corporate journalism, such as issuing editorial statutes to ensure editorial freedom;
- c. should such measures prove to be clearly inadequate, adapts the business and organisational structure of the undertaking.

Chapter 3: Training and Professional Development of Programme Producers

Art. 76

The Confederation may support the training and professional development of programme producers, in particular through contributions to training and professional development institutions. The Federal Office regulates the award criteria and decides on the contributions.

Chapter 4: Research

Section 1: Media Research

Art. 77

The Federal Council regulates the requirements and calculation criteria in accordance with which research projects in the radio and television sector are supported from the licence fee (Art. 22).

²⁵ SR 251

Section 2: Foundation for Audience Research

Art. 78 Function

¹ The Foundation for Audience Research is responsible for collecting scientific data on the use of radio and television in Switzerland. In doing so, it must apply scientific methodology and is independent of the SRG SSR, other broadcasters and the advertising industry. It may transfer the activities in whole or in part to subsidiary enterprises controlled by it and bring in independent experts with regard to data collection. The Foundation is subject to supervision by the Department.

² The Foundation ensures that Swiss broadcasters and scientific research have sufficient data available on the use of radio and television. Licensed broadcasters in mountain and peripheral regions must be able to obtain data with a quality comparable to that provided to other broadcasters.

Art. 79 Data reporting and delivery

¹ The Foundation publishes the most important results of its surveys at least once a year.

² It makes the basic data on use available to third parties at prices which cover the costs. The data is provided to university researchers and the Federal Office free of charge.

Art. 80 Organisation

¹ The Foundation regulates its organisation and its activities by means of regulations which must be approved by the Department.

² The board of the Foundation and the administrative boards of any subsidiary companies consist of the same number of representatives from the SRG SSR as from the other Swiss broadcasters. In addition, other persons are selected for the Foundation board and administrative boards respectively.

³ The Department selects the foundation board. In doing so, it takes account of the proposals of those concerned.

Art. 81 Finance contribution

¹ The Foundation receives an annual contribution from the revenue from reception fees for the development and acquisition of survey methods and systems.

² The Federal Council determines the amount of the contribution when determining the amount of the reception fees.

³ The Subsidies Act of 5 October 1990²⁶ applies. Activities in accordance with Articles 78 and 79 shall be separated from any other activities in the accounts of the foundation and of any subsidiary companies.

²⁶ SR 616.1

Title 6: Independent Complaints Authority for Radio and Television

Art. 82 Composition

¹ The Independent Complaints Authority for Radio and Television (the Complaints Authority) comprises nine part-time members.

² The Federal Council elects the members of the Complaints Authority and appoints the president.

³ The following may not belong to the Complaints Authority:

- a. members of the Federal Assembly;
- b. persons in the service of the Confederation;
- c. members of the management and employees of Swiss broadcasters.

⁴ If there is an incompatibility, the person concerned shall declare which of the two offices he or she opts for. If he or she opts for an office in paragraph 3, he or she shall resign from the Complaints Authority four months at the latest from the occurrence of the incompatibility.

Art. 83 Functions

¹ The Complaints Authority is competent for:

- a. dealing with complaints about the content of editorial programmes (Art. 94);
- b. the selection and supervision of the ombudsman services (Art. 91).

² It produces an activity report annually for the Federal Council.

Art. 84 Independence

The Complaints Authority is independent and is not bound by any directives from the Federal Assembly, the Federal Council and the federal administration. The right of instruction based on Article 104 paragraph 2 is reserved.

Art. 85 Organisation

¹ Unless the Federal Council provides to the contrary, the Committees Ordinance of 3 June 1996²⁷ applies.

² The Complaints Authority organises itself. It shall draw up regulations on its organisation and management. The regulations are subject to the approval of the Federal Council.

³ The Complaints Authority has its own secretariat. It regulates the duties in the regulations in accordance with paragraph 2. The conditions of service of the secretariat personnel are governed by the legislation applicable to federal government employees.

²⁷ SR 172.31

Title 7: Supervision and Legal Remedies

Chapter 1: General Supervision

Section 1: Procedures

Art. 86 Principles

¹ The Federal Office ensures that this Act and its implementing provisions, the licence and relevant international agreements are complied with. The Complaints Authority is responsible for dealing with complaints about the content of editorial programmes (Art. 83 para. 1 let. a).

² Supervisory measures relating to the production and preparation of programme services and those of a purely expediency nature, are not permitted.

³ The provisions of the Federal Act of 20 December 1968 on Administrative Procedure (APA)²⁸ are applicable to the supervisory procedure unless this Act provides otherwise.

⁴ No provisional measures are permitted in the supervision procedure for editorial programmes (Art. 91–98).

⁵ The Complaints Authority only evaluates complaints against radio and television programmes which have been broadcast by Swiss broadcasters. It does not act *ex officio*.

Art. 87 Information for the public

¹ The supervisory authorities shall inform the public of their activities. In particular, they may publish the decisions on administrative and criminal matters and make them accessible online.

² They shall not divulge any commercial secrets.

Art. 88 Data protection

¹ The supervisory authorities may process sensitive personal data if this is necessary for the performance of the duties imposed by this Act.

² Data processing by the supervisory authorities and supervision thereof are governed by the provisions of the Federal Act of 19 June 1992 on Data Protection²⁹ which apply to federal bodies.

²⁸ SR 172.021

²⁹ SR 235.1

Section 2: Measures in the event of Infringements

Art. 89 General

¹ If the supervisory authority establishes an infringement of the law, it may:

- a. require the natural or legal person responsible for the infringement:
 1. to remedy the deficiency and take measures to ensure that the infringement does not recur,
 2. to inform the authority of the precautions taken,
 3. to surrender to the Confederation the revenue achieved as a result of the infringement;
- b. request the Department to make the licence subject to conditions, or to restrict, suspend or withdraw the licence.

² The Department may, at the request of the Complaints Authority (Art. 97 para. 4 second sentence) ban the programme service or allow it only under certain conditions.

Art. 90 Administrative penalties

¹ The supervisory authority may impose an amount of up to 10 per cent of its average turnover achieved in Switzerland in the previous three business years on anyone who:

- a. violates a legally-binding decision of the supervisory authority or a legally-binding decision of the appeals authority;
- b. seriously infringes conditions of the licence;
- c. violates regulations concerning advertising and sponsorship which are contained in this Act (Art. 4, 5 and 9-14), its implementing provisions, the licence or the relevant international agreements;
- d. violates the regulations concerning the transmission obligation (Art. 55);
- e. fails to comply with the obligation to guarantee the right of short reporting of public events (Art. 72);
- f. fails to guarantee free access to events of major importance to society (Art. 73);
- g. violates measures as defined in Article 75 (media concentration);
- h. having been warned of the penalty under Article 97, within one year violates the obligations concerning the content of editorial programmes (Art. 4 para. 1 and 3, Art. 5 and unlawful refusal to grant access to the programme service).

² Anyone who fails to comply with, or belated or incompletely complies with one of the following obligations or who provides false information may be required to pay an amount of up to CHF 10 000:

- a. obligation to notify (Art. 3);

- b. publication obligations (Art. 8);
- c. obligation to notify revenue from advertising and sponsorship (Art. 15);
- d. obligation to notify holdings (Art. 16);
- e. obligation to provide information (Art. 17);
- f. reporting obligation (Art. 18);
- g. obligation to submit statistical information (Art. 19);
- h. obligation to record and retain programmes (Art. 20) or to permanently conserve programmes (Art. 21);
- i. obligations of the SRG SSR (Art. 29);
- j. obligations for broadcasters with a fee-splitting licence (Art. 41);
- k. obligation to notify transfer of the licence (Art. 48);
- l. obligation to comply with the licence area designated by the Federal Council when broadcasting or arranging the broadcasting of programme services (Art. 52 para. 3);
- m. broadcasting of prescribed programme services on preferred channels (Art. 62);
- n. obligation to provide information and to submit documentation (Art. 63 para. 3).

³ When assessing the penalty, the supervisory authority shall take particular account of the seriousness of the infringement and the financial circumstances of the penalised legal or natural person.

Chapter 2: Supervision of the Content of Editorial Programmes

Section 1: Report Procedure of the Ombudsman Service

Art. 91 Ombudsman services

¹ The Complaints Authority shall designate an independent ombudsman service for each region of the three official languages; the ombudsman service is attached to the Complaints Commission for administrative purposes.

² The SRG SSR shall provide its own independent ombudsman services.

³ The ombudsman service deals with reports about:

- a. editorial programmes that have been broadcast, where the report relates to violations of Articles 4 and 5 of this Act or of international law binding on Swiss broadcasters;
- b. refusal to grant access to the programme services of Swiss broadcasters.

⁴ The regional-language ombudsman services are subject to the supervision of the Complaints Authority.

Art. 92 Reports

¹ Within 20 days of the broadcasting or the refusal of the request for access to the programme service, any person may report a programme to the competent ombudsman service. If the report relates to more than one programme, the period begins with the broadcasting of the last programme which is the subject of a report. However, the first of the programmes reported must not be more than three months before the last.

² The report must be lodged in writing. A brief description must be provided, explaining in what way the programme is deficient in terms of content or the refusal to grant access to the programme service is unlawful.

³ The ombudsman service shall register receipt of the report and at the same time notify the broadcaster concerned.

Art. 93 Procedure

¹ The ombudsman service examines the case and mediates between the parties concerned. It may in particular:

- a. discuss the matter with the broadcaster or in minor cases hand it over to it for direct settlement;
- b. arrange a direct encounter between the parties concerned;
- c. issue recommendations to the broadcaster;
- d. inform those concerned about the responsibilities, the applicable law and legal remedies.

² It has no power to make decisions or issue directives.

³ Forty days at the latest after submission of the report, the ombudsman service shall inform the parties in writing of its findings and the manner in which the report is to be settled.

⁴ By mutual consent, the parties may be informed of the settlement orally.

⁵ The ombudsman service bills the broadcaster after the report has been dealt with. In the event of a vexatious report, at the request of the ombudsman service or the broadcaster the Complaints Authority may award procedural costs against the person submitting the report.

Section 2: Complaints Procedure of the Complaints Authority

Art. 94 Entitlement to make a complaint

¹ Complaints against a programme or against refusal to grant access to a programme service may be lodged by anyone who:

- a. was involved in the report procedure before the ombudsman service; and
- b. demonstrates a close relationship with the subject of the disputed programmes or whose application for access to the programme service has been rejected.

² Natural persons who do not have a close relationship with the subject of the disputed programme may also lodge a complaint if the complaint is signed by a minimum of 20 persons.

³ Natural persons who lodge a complaint or who sign a complaint in accordance with paragraph 2 must be at least 18 years old and have Swiss citizenship or possess a permanent or temporary residence permit.

⁴ Complaints may also be lodged by the Department, in which case the provisions of paragraph 1 do not apply.

Art. 95 Time limit and form of the complaint

¹ Within 30 days of receipt of the report in accordance with Article 93 paragraph 3, a complaint may be lodged in writing with the Complaints Authority. The ombudsman service's report must be attached.

² The Department submits its complaint directly to the Complaints Authority within 30 days of the transmission of the programme concerned.

³ In the complaint, the following brief justifications must be provided, showing:

- a. how the programme which is the subject of the complaint has violated provisions concerning the content of editorial programmes of Articles 4 and 5 of this Act or of international law binding on Swiss broadcasters; or
- b. in what way the refusal to grant access to the programme service is unlawful.

Art. 96 Consideration of the complaint and correspondence

¹ If there is a public interest in a decision, the Complaints Authority shall also consider complaints which have been submitted within the time limit but which do not meet all the formal requirements. In this case the party lodging the complaint does not have party rights.

² Unless the complaint is clearly inadmissible or without merit, the Complaints Authority invites the broadcaster to comment.

³ The Complaints Authority may refuse or suspend the consideration of a complaint if judicial remedies in civil or criminal law are pending or have not been used or if an administrative procedure is being conducted in the same matter.

Art. 97 Decision

¹ The deliberations of the Complaints Authority are public unless private interests worthy of protection demand otherwise.

² The Complaints Authority determines whether:

- a. the contested programmes have violated provisions concerning the content of editorial programmes which are laid down in this Act (Art. 4 and 5) or relevant international law; or
- b. an unlawful refusal to grant access to the programme service has occurred.

³ If it establishes that a violation has occurred, it may take or apply for the measures provided for in Article 89.

⁴ In the event of repeated violations of the obligations in Article 4 paragraphs 1 and 3 and Article 5 and in the event of repeated unlawful refusal to grant access to the programme service, the Complaints Authority may threaten or impose an administrative penalty in application of Article 90 paragraph 1 letter h. In particularly serious cases, the Complaints Authority may additionally apply for a programme ban in terms of Article 89 paragraph 2 or for conditions to be imposed.

Art. 98 Costs

¹ Proceedings of the Complaints Authority are free of charge.

² The complainant may be charged the procedural costs for vexatious complaints. APA³⁰ is applicable.

Chapter 3: Legal Remedies**Art. 99**

Legal remedies are based on the general provisions on the administration of federal justice. Appeals against decisions of the Complaints Authority may be lodged directly with the Federal Supreme Court.

Title 8: Administrative Fees**Art. 100**

¹ The competent authority charges administrative fees, in particular for:

- a. granting, amending, and revoking licences;
- b. supervisory activity;
- c. making decisions;

³⁰ SR 172.021

d. dealing with enquiries.

² The Federal Council determines the rates of fees. In so doing, it shall consider the administrative expense and may take account of the limited financial resources of the natural or legal person who is charged the fee.

³ The competent authority may require the party obliged to pay the fees to provide appropriate guarantees.

Title 9: Criminal Provisions

Art. 101 Offences

¹ Anyone who possesses a receiver that is ready for operation or in operation (Art. 68 para. 1) without first notifying the competent authority of this (Art. 68 para. 3) is liable to a fine of up to CHF 5000.

² Anyone who wilfully violates a legally enforceable decision of the competent supervisory authority or of the legal authorities is liable to a fine of up to CHF 100,000.

³ Anyone who influences a licensing procedure or a procedure to amend a licence in his or her favour by providing false information is liable to a fine of up to CHF 100,000.

⁴ In minor cases a penalty may not be imposed.

Art. 102 Jurisdiction and procedures

¹ The Federal Office has jurisdiction to prosecute and adjudicate on offences. The Federal Act of 22 March 1974 on Administrative Criminal Law³¹ applies.

² The fee-collection agency shall make the personal data that is required for criminal proceedings under Article 101 paragraph 1 available to the Federal Office online. The Federal Council may issue implementing provisions concerning the extent of such data, access to the data, processing authorisation, conservation and data security.

Title 10: Final Provisions

Chapter 1: Implementation, Repeal and Amendment of existing Legislation

Art. 103 Implementation

The Federal Council shall implement this Act unless the duties hereunder are assigned to another authority. It shall enact the implementing provisions. It may delegate the task of issuing administrative and technical regulations to the Department.

³¹ SR 313.0

Art. 104 International agreements and representation on international bodies

¹ The Federal Council may conclude agreements of restricted scope under international law which fall within the scope of this Act.

² It may delegate the task of entering into agreements with technical or administrative content and of representing the Confederation on international bodies to the competent Department. The latter may delegate its authority to represent the Confederation on international bodies to an authority designated by it and issue instructions to it.

Art. 105 Repeal and amendment of existing legislation

The repeal and amendment of existing legislation is regulated in the Annex.

Art. 106 Coordination with the Amendment of 24 March 2006³² of the Telecommunications Act of 30 April 1997 and with the Amendment of 24 March 2006 of the Federal Supreme Court Act of 17 June 2005

No longer relevant.

Chapter 2: Transitional Provisions**Art. 107** Radio and television licences

¹ Licences for radio and television programme services which have been awarded on the basis of the Federal Act of 21 June 1991³³ on Radio and Television (RTVA 1991) continue to be valid subject to paragraph 2 until their expiry unless broadcasters expressly declare that they do not wish to make use of them.

² Following the commencement this Act, the Federal Council may cancel the licences of the SRG SSR, swissinfo/SRI, Teletext AG and of those broadcasters which broadcast their programme services in cooperation with the SRG SSR in accordance with Article 31 paragraph 3 RTVA 1991 at the end of any calendar year, subject to nine months' notice.

³ The Federal Council may extend the licences of the SRG SSR and of swissinfo/SRI which have been granted on the basis of the RTVA 1991 by a maximum of five years from the commencement of this Act.

⁴ The Department may extend other licences awarded on the basis of the RTVA 1991 by a maximum of five years from the commencement of this Act. A right of cancellation may be provided for in the extended licences.

⁵ If the licences of the SRG SSR or of swissinfo/SRI continue to apply or if they are extended, Articles 22 and 25 paragraphs 5 and 6 apply, *mutatis mutandis*.

³² BBl 2006 3565

³³ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. 1 3 1633 No. 1 9 4929 art. 21 No. 3, 2006 1039 art. 2]

⁶ The provisions of Article 22 and Articles 44-50 regarding other licences with a performance mandate which continue to be valid or which have been extended apply *mutatis mutandis*.

Art. 108 Transmitter network plan

The Federal Council may extend the directives for transmitter network planning in terms of Article 8 paragraph 1 RTVA 1991³⁴ by a maximum of five years from the commencement of this Act or amend them after consultation with the Communications Commission.

Art. 109 Contributions from reception fees

¹ Broadcasters of radio and television programme services which at the time of the commencement of this Act receive a proportion of reception fees in accordance with Article 17 paragraph 2 RTVA 1991³⁵ may continue to claim a proportion of the fees until the expiry of their licence in accordance with Article 107. The entitlement to a proportion of the fees and the calculation of the proportion are based on Article 17 paragraph 2 of the RTVA 1991 and on Article 10 of the Ordinance of 6 October 1997 on Radio and Television³⁶.

² Within the framework of the conditions in paragraph 1, the Federal Office may arrange fee-splitting for broadcasters which have a licence in accordance with RTVA 1991 and which have commenced transmission operations after the commencement of this Act.

³ The Federal Council takes the financial requirement into account when setting the reception fee (Art. 70).

⁴ The transitional arrangements in paragraph 1 end at the time when the fee-splitting licences in accordance with Articles 38–42 are awarded, but at the latest five years after the commencement of this Act.

Art. 110 Licences for retransmission by wire

¹ Existing licences for the retransmission by wire of radio and television programme services in accordance with Article 39 RTVA 1991³⁷ (wire licences) retain their validity until their owner obtains a telecommunications services licence in accordance with Articles 4 ff. TCA³⁸, but at the latest up to two years after the commencement of this Act.

³⁴ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. 13 1633 No. 19 4929 art. 21 No. 3, 2006 1039 art. 2]

³⁵ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. 13 1633 No. 19 4929 art. 21 No. 3, 2006 1039 art. 2]

³⁶ [AS 1997 2903, 2004 4531, 2006 4395]

³⁷ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. 13 1633 No. 19 4929 art. 21 No. 3, 2006 1039 art. 2]

³⁸ SR 784.10

² Wire licences continue to be subject to:

- a. Article 42 paragraphs 2–4 RTVA 1991;
- b. Article 47 paragraph 1 RTVA 1991 concerning the transmission of programme services of other broadcasters whose licence has been extended in accordance with Article 107 of this Act.

³ The obligations of a wire licensee in accordance with paragraph 2 end as soon as transmission by wire of the programme services covered therein (in accordance with Articles 59 and 60) in their area of operation is clarified with legal force, but at the latest after five years.

Art. 111 Relay licences

Existing licences for the wireless retransmission of radio and television programme services in accordance with Article 43 RTVA 1991³⁹ (relay licences) retain their validity until their owner obtains a radio and telecommunications services licence in accordance with Articles 4 ff. or Articles 22 ff. TCA⁴⁰ respectively, but at the latest two years after the commencement of the act.

Art. 112 Organisational structure of the SRG SSR

The SRG SSR shall implement the organisational structure (Art. 31–33) at the time of renewal of its licence.

Art. 113 Pending supervisory procedures

¹ Procedures in accordance with Articles 56 ff. and 70 ff. of the RTVA 1991⁴¹ pending at the time of commencement of this Act shall be assessed by the competent authority in accordance with the new act. The new procedural law shall be applied.

² If a case relating to supervisory law has arisen before the commencement of this Act and if a procedure is pending, RTVA 1991 is applicable. If a case continues after the commencement of this Act and if a procedure is pending, the violations which occurred before the commencement of this Act shall be assessed on the basis of RTVA 1991. Application of Article 2 paragraph 2 of the Criminal Code⁴² is reserved.

³⁹ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. I 3 1633 No. I 9 4929 art. 21 No. 3, 2006 1039 art. 2]

⁴⁰ SR 784.10

⁴¹ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art. 36 No. 2, 2004 297 No. I 3 1633 No. I 9 4929 art. 21 No. 3, 2006 1039 art. 2]

⁴² SR 311.0

Art. 114 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date: 1 April 2007⁴³

⁴³ BRB of 9 March 2007 (AS 2007 781)

Annex
(Art. 105)

Repeal and Amendment of existing Legislation

I

The Federal Act of 21 June 1991 on Radio and Television (RTVA)⁴⁴ is repealed.

II

The following federal acts are amended as follows:

1. Federal Act of 20 December 1968 on Administrative Procedure⁴⁵

Art. 3 let. e^{bis}

Annulled

2. Telecommunications Act of 30 April 1997⁴⁶

Art. 2

...

Art. 3 let. h

...

Art. 6⁴⁷ para. 1 let. b

...

Art. 11⁴⁸ para. 6

...

⁴⁴ [AS 1992 601, 1993 3354, 1997 2187 Annex No. 4, 2000 1891 No. VIII 2, 2001 2790 Annex No. 2, 2002 1904 art 36 No. 2, 2004 297 No. I 3 1633 No. I 9 4929 art 21 No. 3, 2006 1039 art 2]

⁴⁵ SR 172.021

⁴⁶ SR 784.10. The amendments listed hereafter are inserted in the cited federal law.

⁴⁷ See also art. 106 No. 2 above.

⁴⁸ See also art. 106 No. 2 above.

Art. 23 para. 1 let. b

...

Art. 24 para. 1^{bis}

...

Art. 25 para. 2

...

Art. 35a

...

Art. 39

...

Art. 40⁴⁹ para. 1^{bis}

...

3. Federal Act of 17 June 2005 on the Federal Supreme Court⁵⁰

Art. 83⁵¹ let. p

...

⁴⁹ See also art. 106 No. 2 above.

⁵⁰ SR **173.110**

⁵¹ See also art. 106 No. 2 above.

