

~~CENSORED~~

NATIONAL CAMPAIGN FOR THE REFORM
OF THE OBSCENE PUBLICATIONS ACTS

N C R O P A

FIGHTING SEXUAL CENSORSHIP

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3rd March 1998

Sir Robin Biggam,
Chairman,
Independent Television Commission,
33 Foley Street,
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EU Transfrontier Broadcasting

- UK Proscription of Foreign Satellite Services

Thank you for your letter of 3rd February in reply to mine of 28th January.

I am, of course, well aware of the Article 2 provision in the European Council Directive 89/552/EEC, whereby individual Member States may take action against television services licensed and transmitted by other Member States, if such a broadcast service "manifestly, seriously and gravely infringes Article 22" (Article 2, Section 2(a)).

In your reply, however, you have been extremely selective in citing one passage only from the Directive, viz "material (which) might 'seriously impair' the development of minors". Article 22 has much more to it than the lone, bald, 'out-of-context' extract you quoted, and its collective provisions must be applied in their entirety, with full consideration of all its contents and qualifications.

First of all, Article 22 states that "Member States shall take appropriate measures to ensure that television broadcasts by broadcast-

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ers under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence." This implies that any Member State which does allow the transmission of television broadcasts which "involve pornography (whatever 'pornography' is - the concept exists nowhere in British Law, of course!) or gratuitous violence", does not consider they "might seriously impair the physical, mental or moral development of minors" - and, please note, the criterion being "seriously impair" and not simply "impair"; or, indeed, that they are 'pornographic' or gratuitously violent in the first place! - or both.

The implication which also thus follows when another Member State invokes the Article 2(a) provision to restrict such other Member State's permissive evaluation of its TV programmes content, is that that permissive Member State is in de facto breach of European Law. When the United Kingdom therefore acts in the way it is currently doing, at the initial instigation of the ITC, against the Erotica Rendezvous TV service, it is effectively accusing France (and, indeed, any other EU satellite uplinking country) of such European Law infringement. Since virtually all other EU Member States take as similarly 'permissive' (and sensible!) a line as France on this issue, the UK is, in effect, accusing all of them of violating EU Law. Apart from the supreme arrogance of such a lone UK accusation, it fairly reeks of an archaic, 'Little Englander', insular, anti-European mentality.

But secondly, in any case, Article 22 goes on much further to qualify how and when such prohibition measures - even the prohibition, that is, of acknowledged "pornography or gratuitous violence" - may be invalidated "where it is ensured, by selecting the time of the broadcast or by any technical means, that minors in the area of transmission will not normally hear or see such broadcasts." Where programmes from Erotica Rendezvous are concerned, they are transmitted during the middle of the night and are, moreover, in an encrypted format which requires the use of a previously purchased 'smart card' in order to receive them.

Quite clearly, Erotica Rendezvous Television and the French Government are thus not guilty of transmitting a television broadcast which "manifestly, seriously and gravely infringes Article 22" and which thereby contravenes the provisions of Article 2, Sections 2(a) and 2(b) of the Directive.

The UK Government, on the other hand, has not only clearly not complied with Article 2, Section 2, but is also, thereby, in flagrant contempt of the European Court's September 1996 judgment ordering it so to comply.

Incidentally, you mentioned that, since that 1996 judgment, the UK Government has made proscription orders "against two foreign services, Rendez Vous and Satisfaction Club", and that "there can be no doubt therefore that the European Commission is satisfied that these orders complied with Community Law." Such an assertion is quite unwarranted,

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however. Neither of the proprietors of these two TV services chose (or more accurately felt that they had the financial muscle) legally to challenge the UK Government's bans, which is hardly surprising. Taking on the might, majesty and virtual unlimited resources of a Government Ministry in the Courts is a daunting task and it is no wonder that few either can or wish even to contemplate such a course. For this reason alone, the Secretary of State's bullying actions are especially repugnant, notwithstanding that Chris Smith is personally known to me to be an arch opponent of censorship. Furthermore, that the vast European Commission has acquiesced in these earlier UK proscriptive actions is almost certainly due to the understandable default of the proscribed companies themselves in making appropriate official legal challenges, and not because the Commission has necessarily endorsed or condoned them.

We believe UK Ministers deliberately play on the obvious enormous disparities between vast Government resources and the comparatively very limited assets of smaller, vulnerable television broadcast companies in the area of satellite TV, and thus exercise a gross abuse of their power. Hopefully, however, if the current intended proscription order against Erotica Rendezvous is proceeded with, the UK Government will at last come up against a company which is not prepared to be so cavalierly trampled on by so Orwellian authoritarian and repressed a society as that which shamefully, and now almost uniquely, still prevails in this grotesquely over-censored country.

What would give us much more gratification, however, would be a clear demonstration of a distinct change in the ITC's attitude to adult television in this country with a positive commitment to much greater freedom of choice, and with this end in mind, we hope you will carefully re-think your position on this.

Yours sincerely,



David Webb,
Honorary Director,
National Campaign for the Reform of the Obscene Publications Acts

Copy to:- Monsieur Roger Kinsbourg, President, Erotica Rendezvous TV.