



*Independent Television Commission*

12 March 1998

From The Chairman

RECEIVED 13 MAR 1998

Dear Mr Webb

Thank you for your further letter of 3 March concerning the proscription of foreign satellite services.

I see no grounds for reviewing the ITC's policy in this respect and am satisfied that it accords in every respect with the European Directive and the Broadcasting Act 1990.

The argument that you make to demonstrate that the UK is implicitly accusing other European countries of violating European law is flawed. An alternative conclusion is that the law was worded on the assumption that Member States would have differing interpretations of what material might 'seriously impair' the development of minors. This is a perfectly logical example of subsidiarity and a common-sense solution to an issue on which it was anticipated that agreement on standards would be impossible to achieve. If your interpretation is accepted it follows that the whole proscription procedure laid out so carefully in the Directive is unnecessary since, as you point out, the Member State responsible for the offending service would be in 'de facto' breach of the Directive.

I must also point out that you have misinterpreted Article 22. This clearly distinguishes between two types of material. First (Article 22.1) there is that which 'might seriously impair' the development of minors and which must not be included in programmes at all. Secondly (Article 22.2) there is material which 'is likely to impair' (but not seriously) the development of minors: this material can be included in programmes provided that minors are protected by reason of the times of broadcast or by technical means.

It is the Commission's view that Eurotica Rendez Vous's programming falls into the first category and cannot therefore be adequately protected by encryption or appropriate scheduling.

I should also point out that the proscription process involves a dialogue between the Member State wishing to make an order and the European Commission before the proscription can take place. Furthermore, Article 2a of the Directive states that:

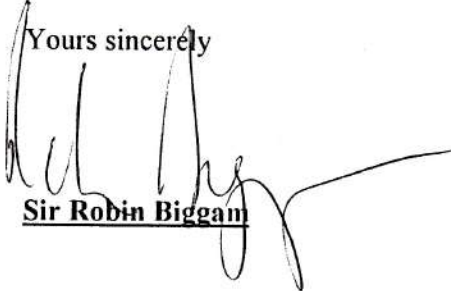
“The Commission shall, within two months following the notification of the measures taken by the Member State (ie proscription), take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.”

The Commission has not communicated any such concern in relation to either of the proscription orders made since the European Court ruling of 10 September 1996, a clear and unambiguous indication that the Commission accepts that the proscription orders are indeed compatible with Community law.

It is unavoidable that we will disagree on the standards that ought to be applied to explicit sexual material on television in the UK, but I hope that you will accept that the ITC is acting in accordance with the law when advising the Secretary of State to make proscription orders.

Finally, on a point of detail, the channel is entitled Eurotica (not Erotica) Rendez Vous and I understand that it is now based in Denmark rather than France.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robin Biggam', with a long horizontal flourish extending to the right.

Sir Robin Biggam

Mr David Webb  
Honorary Director  
NCROPA  
68c Flood Street  
London SW3 5TE