



Broadcasting Policy Division  
2-4 Cockspur Street, London SW1Y 5DH  
Telephone: (44) 0171-211 6441 Facsimile: (44) 0171-211 6460

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

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Dear Mr Webb,

#### **EU TRANSFRONTIER BROADCASTING : EUROTICA RENDEZ-VOUS**

Thank you for your letter of 22 April to the Secretary of State, and for your earlier letters of 13 January, 17 February and 19 March. I am very sorry that you have had to wait so long for a reply.

I recognise your disappointment in the Secretary of State's decision to proscribe the Eurotica Rendez-Vous service. There are, however, a number of misconceptions in your letter of 13 January, and it may be helpful to set out the actual position.

The EC Broadcasting Directive (89/552/EEC as amended by 97/36/EC - relevant provisions enclosed) allows Member States to take action against broadcasts from other Member States which infringe Article 22 of the Directive. This is the sole exception to the principle of freedom of reception and retransmission within the Community. As you note, the UK has previously proscribed a number of foreign satellite channels which have manifestly, seriously and gravely infringed Article 22 (1) of the Directive. The European Commission has consistently confirmed that the action taken by the UK in proscribing these services is compatible with Community law.

The European Court of Justice judgment of 10 September 1996 (Case C-222/94) principally addressed questions concerning jurisdiction over broadcasters, as well as the distinction which had been drawn by the UK between domestic and non-domestic satellite services. The judgment found that the UK had misinterpreted the Directive by using uplink rather than establishment as the basis of jurisdiction. The judgment was implemented by means of the Satellite Television Service Regulations 1997, a copy of which is enclosed for your information. The matter of the protection of minors, however, was distinctly not at issue in the Court's

judgment and the UK's powers to take action against foreign satellite broadcasters transmitting pornography were unaffected by the judgment.

The only international court which has to date considered the interpretation of Article 22 of the Directive is the EFTA Court, which issued an Advisory Opinion on 12 June in the matter of the Norwegian Government v TV1000 Sverige AB. I enclose a copy of the judgment for your information. I would make two observations on this case. First, that the view of the Norwegian Government mirrors that of the UK Government (so we are not, as you assert, the sole country to have taken action against pornographic broadcasts); and second, that the Court's judgment provides support for our analysis of the relevant provisions of the Directive, and specifically the right of the receiving state to determine which programmes might seriously impair the development of children.

The Secretary of State recognises that there is a wide spectrum of views on the balance which needs to be struck between protecting children from harmful material and safeguarding freedom of expression. In this case he takes the view that the nature of the material broadcast by Eurotica Rendez-Vous might seriously impair the development of children. Looking beyond the European Union, this balance is reflected in Article 10.2 of the European Convention on Human Rights, which states that "***The exercise of.. (the right to freedom of expression), since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the protection of health or morals.***" (my emphasis). The jurisprudence of the European Court of Human Rights has consistently recognised that there are limits to the right to freedom of expression.

In reaching his decision to take action against Eurotica Rendez-Vous, the Secretary of State took the view, as required by the Broadcasting Act 1990, that a proscription order would be in the public interest, and that it would be compatible with the UK's international obligations. Having previously notified the French authorities of the proposed proscription on the understanding that the Eurotica Rendez-Vous service operated under French jurisdiction, we have subsequently so notified the Danish authorities, as it was drawn to our attention that the Eurotica Rendez-Vous service falls under the jurisdiction of Denmark. We are thus presently engaged in the consultation process required by the Directive. If this consultation does not produce an amicable settlement a proscription order will be made against the service.

I hope this clarifies the position. We are satisfied that the action we have taken to date accords fully with all the relevant legislation, both domestic and European. I understand the opposition of your organisation to the decision itself, but I trust you can appreciate the reasons for the action we have taken.

Yours sincerely,  
Keith Nichol

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