



RECEIVED 4 FEB 1998

Independent Television Commission

3 February 1998

From The Chairman

Dear Mr Webb

Proscription of Foreign Satellite Services

Thank you for your letter of 28 January.

I appreciate that your organisation is opposed to the policy of proscribing such services but I am satisfied that the ITC and the Government are acting correctly and within their powers in doing so.

The European Court's ruling on 10 September 1996 dealt with two quite separate cases which it had been asked to consider. It ruled against the UK on the grounds that this country had wrongly interpreted the 'establishment' test incorporated in the European Directive on Transfrontier Broadcasting in using uplink as the basis for jurisdiction. The Government took prompt action to bring UK legislation into line on this account.

At the same time the court ruled against Belgium which had been blocking access to its cable operations by a service legitimately licensed elsewhere in Europe. The Court ruled that Belgium had no grounds for preventing the retransmission of such a channel even if it believed that the licensing country was not correctly imposing certain requirements of the Directive. The principle that it is the country of jurisdiction alone which sets the standards for its licensees is fundamental to the aims of the Directive.

There is, however, one set of circumstances in which countries receiving television services can take action against services licensed elsewhere. This is when the protection of minors is involved, particularly, as the Directive indicates, with reference to pornography. Where Member States consider that such material might "seriously impair" the development of minors, they are entitled to seek proscription.

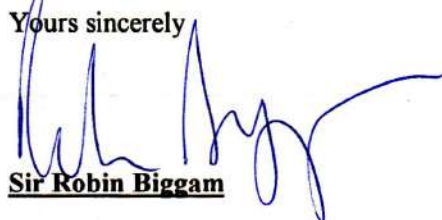
Article 2 of the Directive lays down the conditions under which proscription of such services may take place. As you note in your letter, the Broadcasting Act requires the Secretary of State, when considering proscription, to have regard to the international obligations of the United Kingdom. The Directive imposes on the Member State seeking a proscription order

the requirement to notify both the broadcaster involved and the European Commission. The Commission subsequently is required to "take a decision on whether the measures are compatible with Community law".

Since September 1996, proscription orders have been made against two foreign services, Rendez Vous and Satisfaction Club. There can be no doubt therefore that the European Commission is satisfied that these orders complied with Community law.

I hope this clarifies the situation and reassures you that the ITC is not disregarding European law in this, or any other, respect. On the contrary, the ITC is discharging a statutory duty laid upon it, although I note your objection to the aims and consequences of such legislative provisions.

Yours sincerely



Sir Robin Biggam

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