

[HU] Canal Plus contra HBO

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Canal Plus, a French pay-TV broadcaster, has a registered broadcasting company in Poland and has invested a considerable amount of capital into the Polish audiovisual industry.

HBO is an international pay-TV film channel which belongs to Time Warner Entertainment Company (USA) and is currently not a registered broadcasting company in Poland. As a result, HBO's activities are not governed by Polish law.

HBO is transmitting HBO Polska's film programme to Polish cable operators via satellite AMOS1. The programme is transmitted to AMOS1 through a terrestrial space and telecommunications system which has been installed in Hungary by CEU Ltd., a company registered in Hungary. CEU Ltd. is a telecommunications company which is transmitting, for example, the Polish, Hungarian, Czech and Slovak programmes of HBO, SpektrumTV and Z TV.

At the end of March 1998, the Director of Canal Plus responsible for European Affairs paid a visit to Hungary, aiming to meet Hungarian government officials. During the Director's visit she informed the Chairman of the Hungarian National Radio and Television Board (NRTB) and Hungarian officials that, according to Canal Plus, the presence of HBO in the Polish media market constitutes unfair market behavior, arguing that HBO is benefiting from the Polish broadcasting market without any major business investment. Furthermore, in the opinion of Canal Plus, HBO's broadcasting activities are violating Article 10, par. 1. of the European Convention on Transfrontier Television (Convention) because HBO is broadcasting an overwhelming amount of American motion pictures. On the basis of the above mentioned facts, Canal Plus requested the Hungarian authorities concerned to stop CEU Ltd. from transmitting HBO Polska to Poland.

In the course of the Canal Plus Director's meeting with Hungary's authorities, they informed Canal Plus as follows: according to the definitions and explanatory provisions laid down in Act I of 1996 on Radio and Television Broadcasting and in Act LXXII of 1992 on Telecommunications, the activities of CEU Ltd. constitute broadcast distribution. The broadcaster of HBO Polska programmes is not a registered company in Hungary and the equipment operated by CEU Ltd. is only engaged in broadcast distribution activities. According to Article 2. 33. of the Hungarian Media Act, broadcast dissemination exclusively includes broadcast

diffusion and broadcast transfer. Broadcast distribution activities are regulated as telecommunications services and licensed by the Telecommunications Authority in compliance with the 1992 Act on Telecommunications. Hungarian authorities also noted that, according to Hungarian law, the content of telecommunication services can not serve as a basis for withdrawing telecommunication licences. Because CEU Ltd. fulfilled all conditions required by the Telecommunications Act, it received a ten year licence at the end of March 1998. Hungarian government officials informed Canal Plus that they are going to review this problem fully taking into consideration the spirit of the Convention on Transfrontier Television. They also notified that Hungary ratified the Convention but it has not yet implemented it into its national Law. Consequently, the Convention is still not a valid law presently in the country.

In conclusion, the Hungarian public authorities claimed that there were serious difficulties in stopping the operation of CEU Ltd. and that there is a lack of legal competence to enforce Article 10 of the Convention against HBO.

However, in recognizing the regulatory loophole currently existing in Hungary, which makes it impossible to examine the content of programmes transmitted via broadcast distribution, Hungary's media officials - in accordance with the Convention - were looking for appropriate means aimed at enforcing Article 10 of the Convention. As a result, the Vice President of HBO International made a statement in February 1998 in which he emphasized his respect for the cultural objectives laid down in Article 10 of the Convention and, in the name of HBO, undertook to gradually increase broadcasting time for European works, starting this year. Furthermore, the Budapest Telecommunications Authority disregarded the law, in ordering CEU Ltd. in its licence resolution for the obligatory satisfaction of the Convention, and CEU Ltd. did not appeal against this requirement. In the meantime, at the end of March 1998, the Hungarian Chairman of NRTB asked his Polish colleague to monitor and analyse the legal conformity of HBO Polska's programming activities with the Convention.

