[SE] DTT Licensees Found to Be British

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Swedish Broadcasting Commission

Acting on complaints from viewers, the Swedish Broadcasting Commission made two rulings on 15 June 2000 that put the present licensing system used by the Swedish Government into question.

Kanal5 Ltd and TV3 Ltd both hold licenses issued by the British Independent Television Commission (ITC) for satellite transmissions. In both cases the broadcasts are directed towards the Swedish market and are in the Swedish language.

In 1998 Kanal5 AB and TV3 AB received licenses from the Swedish Government to transmit digital terrestrial television. Both companies were established in Sweden and in both cases part of the same international concern as their respective UK namesakes. Transmissions began in early 2000 and were almost identical to the satellite transmissions. The only difference was that, as Swedish legislation is for the most part stricter on advertising issues than the UK legislation, advertising messages on the satellite version were often replaced by a message saying that advertisements could not be shown due to legal complications.

The ITC told the Broadcasting Commission that in its opinion the UK companies were indeed established in the UK, and that editorial decisions were taken at the "companies" headquarters in the UK. Both channels declared that if the Commission was to find that the satellite and DTT transmissions were one and the same service, it was to be considered conducted by the UK company.

It was also noted in the Commission's ruling that it had previously in 1995 found that the companies operating the satellite service under the names TV3 and Femman (later Kanal5) were not to be considered established in Sweden.

In its ruling the Swedish Broadcasting Commission found, with reference to the Swedish Radio and Television Act and the Directive (89/552/EEC, amended by Directive 97/36/EC), that only the person that holds editorial control can be the broadcaster. It also found that since content on satellite and DTT transmissions were almost identical, editorial control could only rest with either TV3 AB or TV3 Ltd and either Kanal5 AB or Kanal5 Ltd. Finding no indication that the Swedish companies exercised any editorial control, the Commission found that editorial control rested solely with the UK companies. Since there was no reason to suggest that these companies were to be considered established in Sweden, the

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Commission concluded that Swedish law could not be applied to these broadcasts, and consequently dismissed the complaints. The decisions, which were unanimous, are not subject to appeal.

The rulings by the Swedish Broadcasting Commission put into question the system of prior authorization used in many countries, at least if what is desired is a virtual retransmission terrestrially of a satellite broadcast.

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http://www.grn.se/Pressmeddelanden/2000/202-203-00pm.htm

Broadcasting Commission's decisions (SB 202 and 203/00)

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