# Court of Justice of the European Communities: New Decision on the Interpretation of the "Television Without Frontiers" Directive

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On 23 October, the Court of Justice of the European Communities delivered its judgement in case C-245/01, RTL v. Niedersächsische Landesmedienanstalt für privaten Rundfunk. The dispute concerned the interpretation of Article 11 of the "Television Without Frontiers" Directive (Directive 89/552/EEC of 3 October 1989, as amended by Directive 97/36/EC), which lays down provisions in respect of television advertising, regulating inter alia the frequency of advertising breaks in the transmission of audiovisual works.

The questions referred by the Niedersächsisches Oberverwaltungsgericht (Lower Saxony Higher Administrative Court) concerned the interpretation of the notion of "series" according to Article 11, paragraph 3 of the Directive. The rules of the Directive provide for a distinction between feature films and films made for television, on the one hand, and works such as series, serials, light entertainment programmes and documentaries, on the other hand. Feature films and films made for television may be interrupted with an advertising break per period of 45 minutes; an additional break is permitted if the programme's duration is at least 20 minutes longer than two or more complete periods of 45 minutes. So, in practice, a film of 110 minutes may be interrupted three times. It should be recalled that, according to the ARD v. Pro Sieben judgment (case C-6/98 of 28 October 1999  see IRIS 1999-10: 5), Article 11, paragraph 3, of the Directive is to be construed as prescribing the "gross principle", so that, in order to calculate the 45-minute period for the purpose of determining the number of advertising interruptions allowed in the broadcasting of audiovisual works such as feature films and films made for television, the duration of the advertisements must be included in that period. as series, serials, light entertainment programmes and documentaries are covered by a different provision in Article 11, paragraph 4, which is more generous to broadcasters allowing an advertising break every 20 minutes.

The dispute before the German Court concerned the legitimacy of the practice, followed by the private broadcaster RTL, of broadcasting some films made for television and interrupting them according to the rules inserted in paragraph 4 of Article 11. The broadcaster suggested a broad interpretation of the term "series", so including in that notion different films linked by formal elements such as

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identical broadcasting slots, or the fact that scripts are based on novels, or that there are common themes such as love, passion or family relationships in general.

The Court did not accept the position of RTL, according to which, since the primary objective of the Directive is to ensure freedom to provide broadcast television programmes, any rule of the Directive that provides for a limitation on this freedom should be construed strictly. Having stated that neither the Directive, its preparatory works, nor the European Convention on Transfrontier Television shed any light on the interpretation of the term "series", the Court construed Article 11, paragraph 3, by reference to the purpose of the provision and to its systematic interpretation. Implicitly reversing the solution given in ARD as to the aims of the Directive, the Court held that the purpose of Article 11 is to establish a balanced protection of the interests of television broadcasters and advertisers, on the one hand, and those of the rightsholders and consumers as television viewers, on the other hand. Also referring to the Preamble of the Directive, the Court maintained that for audiovisual works such as films made for television the text of the Directive is intended to provide television viewers with increased protection against excessive advertising, and a conception based on formal criteria, as that advanced by RTL, would undermine that purpose, leading to a circumvention of the rule. It follows that, according to the Court, the term "series" requires links of substance, that is common elements which relate to the content of the films concerned, such as, for example, the development of the same story from one episode to another or the reappearance of one or more characters in different episodes.

***Judgment of the European Court of Justice of 23 October 2003, case C-245/01, RTL v. Niedersächsische Landesmedienanstalt für privaten Rundfunk***

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