[SE] TV Channel Kanal 5 Registered in the UK Ought to Belong under Swedish Jurisdiction

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The Swedish Broadcasting Commission has tried two jurisdiction cases regarding the television channels TV3, ZTV and Kanal 5. The three channels are registered in the UK by Ofcom, but the Swedish Broadcasting Commission found that Kanal 5 ought to belong under Swedish jurisdiction.

The Swedish Broadcasting Commission found that it is the Swedish company Kanal 5 AB that should be considered as the responsible broadcaster with regard to the programmes of Kanal 5. The reasons behind the decision were the following. Kanal 5 Ltd and Kanal 5 AB are sister companies. The British company has 19 employees only. The Swedish company has more than four times as many employees. According to Kanal 5 AB's annual report for 2002, Kanal 5 Ltd is responsible for and sells broadcasting services to Kanal 5 AB. According to the information available, these circumstances have not changed in subsequent years. Kanal 5 Ltd has stated that the key persons with editorial responsibilities, as well as those who make the editorial decisions, are employed by both Kanal 5 AB and Kanal 5 Ltd, but that the place where the decision-making is carried out is the United Kingdom. According to the information available, these persons live in Sweden. Taken all these circumstances into account, there is, according to the Swedish Broadcasting Commission, a strong basis for the conclusion that Kanal 5 AB is the responsible broadcaster since that company has the editorial responsibility and transmits the television broadcasting.

Kanal 5 AB is established in Sweden, where it has its head office, and where, in addition, the workforce involved in the pursuit of the television broadcasting activity operates. Following on from that conclusion, it is of no relevance if the persons who make the editorial decisions go to the United Kingdom to do so (see Television without Frontiers Directive, art. 2, section 3 b). The Swedish Broadcasting Commission's conclusion is that Kanal 5's programmes should comply with the Swedish Radio and Television Act. However, since Ofcom considers Kanal 5 to fall under British jurisdiction and since a situation of dual jurisdiction would be contrary to European law, the Swedish Broadcasting Commission has come to the conclusion that it cannot supervise Kanal 5 in accordance with the rules in the Swedish Radio and Television Act, in spite of what it found in its decision.

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In the light of its findings, the Swedish Broadcasting Commission has formally requested that Ofcom review its position regarding Kanal 5.

Regarding TV3 and ZTV, the Swedish Broadcasting Commission concluded that Viasat Broadcasting Ltd is to be considered as the responsible broadcaster with regard to the programmes of these channels. The company is established in the UK and therefore these channels do not belong under Swedish jurisdiction.

BESLUT SB 14/05 - 2005-01-26 - Dnr: 76/04-52 - SAKEN Sponsringsskyltar i Fame Factory, TV3, och Big Brother, Kanal 5, 2004-01-25; fråga om jurisdiktion

http://www.grn.se/PDF-filer/Namndbes/2005/sb014-05.pdf

Decisions of the Swedish Broadcasting Commission

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