# [SE] Improper Favouring of a Commercial Interest in Sponsoring Message

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On 3 December 2007 *Kammarrätten i Stockholm* (The Stockholm Administrative Court of Appeals) judged in a case regarding improper favouring of a commercial interest in a sponsoring message. The case concerned the application of provisions in the *Radio- och TV-lagen* (The Radio and TV Act – RTL). The RTL transposes into Swedish law the "Television without Frontiers" Directive 89/552/EEC, amended by Directive 97/36/EC.

The programmes in question were two episodes of a Swedish TV-series broadcast by the Swedish nationwide television channel TV 4 on 2 October 2007 and 9 October 2007 respectively. During each episode there were two breaks for advertising, in connection with the breaks and before and after the programmes, sponsoring messages were broadcast.

In short, the sponsoring messages were constituted as follows. The messages broadcast on 2 October and the second break of the 9 October messages carried a voice-over saying: "The movie is presented by Eniro – search help via telephone". In connection with the voice-over a sign with a mobile phone displaying the number 118 118 was shown. Thereafter Eniro's logotype was shown. During the first break of the message broadcast on 9 October a voice-off informed: "The movie is presented by Eniro – search help via the Internet". In connection with the voice-over a sign with a computer bearing the text "eniro.se" on its screen was shown. Thereafter Eniro's logotype was shown. Eniro is a company providing services allowing users to find telephone numbers, addresses and directions to Swedish individuals and companies.

The RTL, section 6:4, states that programmes, which are not commercials, may not improperly favour commercial interests. RTL, section 7:8, stipulates that if a programme, which is not a commercial, has been paid for by someone other than the one responsible for carrying out the broadcast, then it shall be specified as to who the sponsor is. This information shall be provided at the beginning and the end of the programme respectively or at least at either the beginning or the end of the programme. *Granskningsnämnden för radio och TV* (the Swedish Broadcasting Commission – GRN) filed a suit against TV 4 claiming that a special fee should be imposed on TV 4 for the improper favouring of commercial interests. The GRN claimed that the improper favouring was constituted by

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showing the telephone number and the URL related to Eniro's services. *Länsrätten i Stockholms län* (The Stockholm County Administrative Court) granted GRN's request and imposed a special fine amounting to SEK 100,000 (approximately EUR 10,600) on TV 4.

The Stockholm Administrative Court of Appeals overturned the judgment of the Stockholm County Administrative Court. The Administrative Court of Appeals firstly states that by showing, in addition to the sponsor's name, the telephone number and the URL, which are substantial parts of the sponsor's products, the sponsoring messages went beyond what is required for information purposes according to section 7:8 of the RTL. However, the Administrative Court of Appeals observes that the GRN based its claim on section 6:4 of the RTL, i.e. the provision regarding improper favouring.

As mentioned above, section 6:4 of the RTL concerns programmes that are not commercials. Therefore, according to the Administrative Court of Appeals, the question is whether the sponsoring messages in question can be considered as being "programmes". The main regulation of sponsoring messages is found in chapter 7 of the RTL. According to section 7:8 of the RTL the information concerning who the sponsor of a programme is shall not be included in the advertising time prescribed in section 7:5 of the RTL. The Administrative Court of Appeals states that the wording of the RTL supports the view that sponsoring messages are to be considered as messages of an advertising nature although the provisions on commercials are not fully applicable to such messages. Furthermore, it is stated that sponsoring messages should "surround" a programme. The formulation and the placing of the provision does not support the notion that a sponsoring message to be regarded as a "programme".

Hence the GRN has based its request on a provision, which is not applicable, and therefore TV 4's appeal shall be granted and the judgment of the Stockholm County Administrative Court overturned.

### *Kammarrätten i Stockholm, 03/12/2007*

*Judgment of the Stockholm Administrative Court of Appeals, 3 December 2007*

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