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Broadcasting law and broadcasting policy in Ireland

Wolfgang Truetzschler

Introduction

The following article was written in order to present, in a systematic manner, an overview of the regulations applicable to the broadcast media in Ireland. It also constitutes an attempt to outline and evaluate present-day broadcasting policy in Ireland. It provides a brief summary of the various regulations applicable to broadcasting in Ireland. Subsequently, it considers in detail the regulations for public and private broadcasting services, as well as those that govern the operation of cable television and of the new MMDS television retransmission systems which are currently being implemented throughout Ireland.

Broadcasting regulations in Ireland: An overview

According to current Irish media law, there are five specific Acts regulating Irish broadcasting: The Wireless Telegraphy Acts 1926-1972, which specify, *inter alia*, that broadcasting is subject to licensing by the Minister for Communications; the Broadcasting Authority Acts 1960-1979, which regulate the public broadcaster RTE; the Radio and Television Act 1988, which contains the regulations applicable to private commercial broadcasting; the Broadcasting and Wireless Telegraphy Act, 1988, which was designed to tighten the gaps in the law concerning illegal broadcasting and to increase the penalties for such broadcasting (see Byrne & Binchy, 1989: 404 ff.); and the recently enacted Broadcasting Act 1990, which, *inter alia*, facilitates the implementation of the EC Directive on Television Broadcasting, and which has major implications for public service broadcasting in Ireland, as discussed below. Additional 'regulations' for the private broadcasters are contained in the broadcasting contracts signed between individual stations and the Independent Radio and Television Commission (IRTC), the government-appointed regulatory body for private broadcasters.

Cable Television is governed by the Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations 1974, as amended (1); the new Multipoint Microwave Distribution System (MMDS), is subject to the Wireless Telegraphy (Television Programme Retransmission) Regulations 1989. These regulations are discussed below. Apart from these specific Acts and Regulations, other statutes such as Contempt of Court, Censorship, Defamation, Copyright, Official Secrets Act, Public Order, also apply to broadcasting (see Hall & McGovern, 1986).

Additional regulations of the Irish broadcast media may arise from Ireland's international obligations, such as membership of the European Communities, of the Council of Europe, of the United Nations, especially the International Telecommunications Union, the UN agency for telecommunications. An example of an international agreement which was incorporated into Irish law is the Broadcasting (Offences) Act, 1968, a statute which results from Ireland's ratification of the 'European Agreement for the Prevention of Broadcasting transmitted from Stations outside National Territories'. Other international agreements, declarations and resolutions need not be specifically enacted by the Oireachtas to become part of domestic law, as Article 29.6 of the Constitution requires, but they may nevertheless be of 'legal significance and have a legal function' (Hall & McGovern, 1986: 9; see also Casey 1987:168-186).

Public broadcasting service

Public broadcasting in Europe has traditionally been a service which has been 'largely and widely protected from market forces and expected to use its monopoly position to fulfill social functions, which include giving access to diverse voices and reaching majorities with information, education and culture' (McQuail, 1986: 164). Although Ireland's public broadcaster RTE has since its inception operated in a more competitive environment than most of its European monopoly broadcaster counterparts, due to the wide availability of foreign (British) television and radio channels, RTE, like most other public broadcasters, has always been subject to fairly close regulations and even closer 'scrutinization' by politicians (see Kelly & Truetzschler, 1986: 151ff.). These regulations are contained in the Broadcasting Authority Acts 1960-1979.

The Broadcasting Authority Acts endow the RTE Authority with the responsibility for establishing and maintaining national radio and television broadcasting services

(2). The Broadcasting Authority (Amendment) Act 1979 enables RTE to also establish and maintain local broadcasting services such as its Cork service, Cork 89 FM, and its experimental mobile community radio, which operated in the period 1974-1988 (see Pine & Thomas, 1986). Over the last decade RTE has on several occasions submitted plans on local radio to successive governments (see RTE, 1979), but it has never received government approval for any of its plans. In fact, Section 4 (1) of the Radio and Television Act 1988, specifically excludes RTE from providing broadcasting services regulated by the 1988 Act and RTE can therefore provide such services only if it is granted a licence by the Minister for Communications.

RTE: Duties and regulations

The Acts specify the general duty of the RTE Authority: 'In performing its functions the Authority shall in its programming—

(a) be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language.

(b) uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and

(c) have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of such countries which are members of the European Economic Community' (3).

Additional programming regulations specified in the Acts include the duty to present all news and current affairs programmes in an objective and impartial manner and in one that is fair to all interests concerned. Furthermore, programmes must not unreasonably encroach on the privacy of an individual. Also, RTE is prohibited from broadcasting anything 'that may reasonably be regarded as being likely to promote, or to incite to, crime or as tending to undermine the authority of the State'. (In the Acts no specific reference needs to be made to the broadcast of blasphemous, seditious or indecent matter as the broadcast of such matters is a punishable offence according to Article 40.6.1 of the Constitution.) Finally, RTE is required not to express its own views in news and current affairs programmes, except for broadcasts concerning broadcasting policy (4).

Section 20 of the Broadcasting Authority Act 1960 enables RTE to broadcast advertisements, and to fix charges and conditions for such broadcasts. This section also prohibits RTE from broadcasting any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute. (However Section 18 (2) does permit the transmission of party political broadcasts.) Advertising on RTE is broadcast in accordance with the 'RTE Code of Standards for Broadcast Advertising', but in future this code will be replaced by a code of practice relating to advertising and other commercial promotion, which the Minister for Communications is obliged to draw up under Section 4 of the Broadcasting Act 1990.

The Acts reserve some central powers to the Minister for Communications. These include the power to appoint the nine members of the RTE Authority, which does not have to be representative of specific social groups, as is the case in some European countries. A member of the Authority cannot be dismissed by the Minister alone, but only by a majority vote in parliament. The appointment or removal of the Director-General by the Authority is subject to the Minister's approval. The Minister also has important powers regarding finance by consenting to borrowing, by deciding on the level of the licence fee, and by approving the amount of broadcasting time. Until the enactment of the Broadcasting Act 1990, the Minister also had the power to specify the amount of advertising allowed on RTE.

Section 31(1) enables censorship by the Government in relation to 'The Troubles' in Northern Ireland: It specifies that the Minister may direct RTE to refrain from broadcasting interviews, or reports of interviews, with spokespersons of prohibited organisations, such as the IRA (5). This ban has been annually renewed since 1978 and RTE has always complied with this gross interference in broadcasting by the State. Section 31(2) empowers the Minister for Communications to direct RTE 'to allocate broadcasting time for any announcements by or on behalf of any Minister of State in connection with the functions of that Minister'.

The Acts establish a Broadcasting Complaints Commission to which the public may make representation if they judge programmes, news or advertising to be contrary to statutory programme requirements or to the RTE advertising codes of standards. The particulars of a decision by the Commission on a complaint must be published in

2. RTE operates 2 national television channels (RTE 1 and Network 2) and 4 national radio services: Radio 1, the most popular radio station in the state with a traditional public service programming mix; FM 2, a 24 hour popular music channel; the Irish language Raidio na Gaeltachta; FM 3 with its classical music programmes. RTE has also embarked on a joint venture with Radio Luxembourg, namely the operation of a new radio station Atlantic 252 since 1989. RTE holds 75 per cent of the shares in this new station, which is estimated to have cost around £4m to set up and which RTE expects to provide profits in the region of £2.5m per annum. Atlantic 252 is a commercial wall-to-wall popular music station, financed by British advertising and transmitting its programmes from Ireland to Britain on long wave.

3. Section 17 of the Broadcasting Authority Act 1960 as amended by Section 13 of the Broadcasting Authority (Amendment) Act 1976.

4. Section 18 of the Broadcasting Authority Act 1960 as amended by Section 3 of the Broadcasting Authority (Amendment) Act 1976.

5. The current order made under Section 31 prohibits interviews or reports of interviews with spokesmen of any organization 'styling itself IRA, Sinn Fein, UDA, INLA, and any organization prescribed under the [British] Northern Ireland (Emergency Provision) Act 1976. The order also specifically bans broadcasts made by or on behalf of Sinn Fein and Republican Sinn Fein.

a manner that it considers suitable, and reports of such decisions are usually published in the *RTE Guide*. The Broadcasting Act 1990 additionally establishes a formal right of reply (see below).

Private broadcasting services

Until the end of 1988, Ireland's privately owned broadcasting services traditionally consisted of unlicensed or pirate radio stations. These stations operated with little interference by the state, and at the 'height' of their development in the late 1970s and early to mid 1980s, 70-100 mainly 'wall to wall' popular music stations operated throughout Ireland (see Mulryan, 1988).

With the enactment of the Radio and Television Act 1988 (henceforth referred to as the 1988 Act), the Irish broadcasting scene underwent major changes. These were not the result of any systematic government media policy, but were more due to reasons of 'grassroots' pressure by the large audiences of some of the pirate radio stations, and probably due to the not inconsiderable embarrassment that Ireland was subject to (for inadequate policing of the internationally allocated frequency spectrum) in international regulatory fora such as the International Telecommunications Union. The Act on the one hand privatizes the airwaves, in that it abolishes the RTE-monopoly in radio and television broadcasting, and on the other hand it regularizes the de facto totally deregulated, 1988 situation in the field of radio broadcasting that was characterized by the operation of the numerous 'pirate' radio stations throughout the State.

The 1988 Act enables the setting up of a private national commercial radio station, a private national commercial television station, and an unspecified number of sound broadcasting services. The national broadcaster RTE is excluded from the provision of local radio under this Act (Section 4(1)) and the only local radio station it traditionally operates and will continue to do so is Cork Local Radio, renamed Cork 89 FM.

As is customary in Irish media law, the central powers contained in the Act are reserved to the Minister for Communications, although the ministerial decisions on the awarding of licences have to be taken in consultation with, and on advice of, the new regulatory authority, the Independent Radio and Television Commission (IRTC), set up under the Act (Section 3).

The ten members of the IRTC were appointed by the Minister in October 1988 for a period not exceeding five years. The membership is largely constituted of business people, some of whom have experience in broadcasting or in some other mass medium, and most of whom were reported at the time as having sympathies towards the government party, then Fianna Fail. The Chairperson Mr. Justice Henchy is a respected retired judge to the Irish Supreme Court, a fact that has considerably strengthened the authority of the IRTC and its decisions, and that has lent weight to its interpretations of the, at times vaguely phrased, regulations contained in the Act. However, the Minister has the sole authority to issue licences and to vary the conditions of any such licence. To date the Minister has not acted contrary to the recommendations made by the IRTC; only the future will tell the extent to which this will prove to be a source of conflict between the licensing authority and the Government.

Criteria for the awarding of licences

Section 6 of the 1988 Act specifies certain criteria according to which licences are awarded. Thus, in making its recommendations for the awarding of licences, the IRTC 'shall have regard to', *inter alia*, the character and expertise of the applicant, the range of programming, including Irish-language programmes, provided by the applicant, the extent to which the application accords with 'good economic principles'. No distinction is made between local, regional or community radio in the Act, except that a special consideration of local community interests is included as one of the criteria. The Act also enables the granting of temporary sound broadcasting licences to institutions such as hospitals and colleges. The press is not excluded from applying for radio licences, except that in the consideration of licence applications the IRTC 'shall have regard to the desirability of allowing any person, or groups of persons, to have ... an undue amount of the communications media in the area specified in the licence' (Section 6 (h) of the Act).

An analysis of the IRTC's recommendations on the awarding of franchises for the private national and the 23 private local radios, sheds some light on the relevance of the criteria specified in the Act. Judging by the official IRTC guide for licence applicants (IRTC 1988) and by the oral hearings of such applicants, which preceded the making of recommendations by the IRTC (and which contrary to the Irish political tradition of decision making behind closed doors, were actually held in public), the

'good economic principles' criterion seems to be the most significant one. Thus, more than half the guide and most of the questions put to applicants by the IRTC at the oral hearings were concerned with the requirements of franchise applicants to provide a detailed market analysis, an outline of the marketing and revenue generating strategies planned and with the making of financial projections for the first two years of operation of the planned broadcasting service.

A far smaller section of the aforementioned guide is concerned with production/operation facilities and with the actual programming. However, judging by the fact that the IRTC made four recommendations on awarding licences to radio groups who planned to organize their radio stations in accordance with the Community Radio Charter of the National Association of Community Broadcasting (see NACB, 1988), the criterion according to which the proposed broadcasting service should serve 'recognisably local communities' does seem to have been observed to a certain extent. The vaguely phrased criterion concerning press ownership of local radio mentioned above has to date been interpreted by the IRTC as not precluding a 25 per cent ownership of a local radio station by a local newspaper, as is the case in six of the groups to whom licences were awarded.

In making its recommendations for the awarding of sound broadcasting licences, the IRTC has generally followed the 1988 Government plan for the licensing of a national and 24 local radio stations. At the time of the parliamentary debate of the 1988 Act, the Government also announced that up to 100 neighbourhood (community) radio stations and a number of 'community-of-interest' stations would be licensed. To date this has not happened, probably in order to ensure the economic survival of the existing private radio stations before licensing any additional competitors for radio audiences.

Private radio: Duties and regulations

The main regulations in the 1988 Act concerning programming state that 20 per cent of transmission time must consist of news and current affairs (which is not defined in the Act and which therefore includes programmes such as phone-ins, vox populi, etc.). However, the legislation also contains a 'cop out' clause (Section 15) according to which the IRTC can grant a derogation from the 20 per cent requirement in full or in part, 'provided there is a reasonable plurality' of other sources of news and current affairs available to the listener. Although the rationale behind the derogation concept is that the news and current affairs quota 'could impede the development of specialized radio services' (Hall & McGovern, 1988: 21), this clause was used in 1989 by Capital Radio in Dublin (for which the 20 per cent requirement was 'temporarily suspended'). It may be availed of even more so in the future, especially if local radio does not turn out to be a 'licence to print money' in the sense of failing to attract enough listeners and therefore advertising for such programmes. The in terms of financial viability all important Section 10 states that not more than 15 per cent (or not more than 10 minutes per hour) can be taken up by advertising. This is a high advertising content compared to the 9 per cent on commercial radio in Britain and 7.5 per cent (10 per cent until October 1990) on RTE radio and television.

Other regulations on programming contained in the 1988 Act are similar to those contained in the Acts governing RTE. Section 9 of the 1988 Act requires objectivity and impartiality in news/current affairs programmes but does permit party political broadcasts, that current affairs broadcasts are fair to all interests concerned and are without expression of personal views by the sound broadcaster, and that in any programmes broadcast, the privacy of any individual is not unreasonably encroached upon. Section 9 also states that nothing offending against good taste and decency, or as being likely to promote, or to incite to, crime or as tending to undermine the authority of the State may be broadcast. The 'censorship' Section 31 of the Broadcasting Authority Acts governing RTE also applies to the private broadcasting services (Section 12 of the 1988 Act). The same applies to the Broadcasting Complaints Commission set up under the Acts governing RTE (Section 11 of the 1988 Act) and the formal right of reply (established under the Broadcasting Act 1990). The regulations concerning the content of broadcast advertising (Section 10) are similar to those imposed on the RTE Authority (see Hall & McGovern, 1988: 16).

Even though this is not specified in the law, the individual contracts between the IRTC and the private broadcasters state that independent radio licences are awarded for a period of seven years, with the option of a renewal for a further seven years. Certain additional 'regulations' are contained in the contracts signed between the IRTC and individual local and the national radio licence holders, as is provided for in Section 4(2). (These contracts may be inspected by any member of the public - a right that follows from Section 14(5).) One of the more important of these additional requirements concerns the ownership of the individual radio station. Thus not more than 25 per cent of the shares in a local radio station may be held by another local radio station, a local

or national newspaper, a television station or a communications company, a political party, a religious denomination or a person not normally resident in a Member State of the European Communities, without the approval of the IRTC. Finally, the contracts enable the IRTC to prescribe certain rules concerning the quality, range and type of programmes broadcast. As far as is known, the IRTC has not made such rules to date. As well as that changes in the local character of individual stations by means of the cost-saving 'device' of networking of individual radio stations (i.e. the same programme is broadcast on several local radio stations) require the consent of the IRTC. No other regulations concerning the quality, range and type of programming are contained in the Act. As was discussed above, such considerations are only mentioned as criteria according to which licences are to be awarded, but not as regulations to which the private broadcasters have to adhere.

The programming on the existing radio stations is essentially music led, i.e. with the exception of the community radios and some of the rural stations, these stations broadcast 'wall to wall' popular music (or country and western or 'middle of the road' music), interspersed by the occasional news bulletin and short, cheaply produced, current affairs' programmes in order to fulfill the legal requirement of 20 per cent of programming time devoted to news and current affairs. 15 per cent of programming time is taken up by advertising. To date, there seem to be very few Irish language programmes on private local radio.

Enforcement of regulations

Notwithstanding the fact that the 1988 Act leaves the IRTC some scope in drawing up programming regulations, the practice of private commercial broadcasting in Ireland points to one of the fundamental differences between public broadcasting and private broadcasting, namely that the latter are not as strictly regulated as the former. In practice, the main difference between private broadcasters and RTE is not so much in the regulations, but more in the monitoring of individual stations by the government and by the IRTC. As mentioned above, the public broadcaster has always been subject to fairly close regulation. In contrast, the IRTC has on occasions taken a very liberal interpretation of the compliance with the existing regulations by private broadcasters.

The monitoring of private broadcasters by the IRTC is required under Section 4(7) of the 1988 Act. Ensuring a strict compliance with the regulations by individual broadcasters may at times be in conflict with the IRTC's main function of arranging for the provision of broadcast services other than those provided by RTE, because such services will only continue if they are economically viable. But a strict adherence to the regulations, such as the 20 per cent news and current affairs requirement, is very costly and may therefore endanger the profitability of individual radio stations. To date it seems that the IRTC has been fairly flexible in its monitoring duties, as can be seen, for example, by the fact that it has enforced the 20 per cent rule (which was widely flouted by individual radio stations in the first half of 1990) on the one hand, but has allowed the night-time transmission of an essentially British news/current affairs programme on Capital Radio, Dublin.

Only time will tell to what extent or not the regulations outlined above will be adhered to by individual private broadcasters. If private radio (and television) turns out to be unprofitable or not as profitable as anticipated, a gradual relaxation or non-enforcement of the regulations may ensue. This has happened in some European countries such as in Greece, Spain, Belgium and France, where networking of individual local radio stations is common - for example, in France eight networks control almost all private local radio stations. Alternatively, a loss making private broadcasting sector may lead to further Government attempts to divert resources from the public broadcaster to the private sector, as was the intention behind the enactment of the Broadcasting Act 1990 outlined below.

Other provisions of the 1988 Act concerning private sound broadcasting services include giving the IRTC power to investigate into the affairs of licensed radio broadcasters (Section 13); terms and conditions of sound broadcasting contracts (Section 14); enabling the Minister for Communications to require RTE to cooperate with sound broadcasting operators in the provision of transmission facilities, subject to payment of RTE (as has happened with several of the local radio stations) (Section 16); and more routine requirements involving the establishment of an independent State Body (Schedule to the 1988 Act). These provisions are fully discussed by Hall & McGovern, 1988.

Private television: Duties and regulations

The Radio and Television Act 1988 also provides for the licensing of a private television programme service. The franchise for the national television service 'TV3' was awarded in April 1989 to the Windmill Lane Consortium, which includes the independent film/video production company Windmill Lane and the Jefferson Smurfit

Group, Ireland's largest industrial concern in terms of annual turnover. According to newspaper reports in January 1991, the initial funding needed to set up TV3 is £30 million, an amount that would suggest an involvement by foreign investors. Several such possible investors have been named in the press over the last 18 months (6), the most recent and most notable amongst them being CLT, the mother company of Radio Luxembourg (RTL). TV3 is currently negotiating with the Department of Communications for suitable frequency distributions, and both the funding arrangements as well as the signing of the broadcast contract between the IRTC and the consortium are conditional upon the successful conclusion of these negotiations. Overall, TV3 is unlikely to be operative before the second half of 1991 at the earliest.

According to the 1988 Act, most of the regulations for private sound broadcasters, which are contained in Part III of the Act and which are outlined in the previous section of this paper, also apply to the new television programme service. Specifically this applies to the procedure and criteria according to which the licence for the television service is awarded; to the objectivity and impartiality clause contained in Section 9 of the Act; to the regulations concerning advertisements; to Section 12 on complaints by the public; as well as to those on censorship in Section 31 of the Broadcasting Authority Acts. Section 7, which gives the Minister for Communications the power to vary any term or condition in the licence awarded to sound broadcasting operators, now also applies to the new television service, according to Section 6(3) of the Broadcasting Act 1990. Finally, Section 14 on the terms and conditions of the broadcasting contract between the IRTC and the television service licensee, as well as Section 15, which enables the Minister for Communications to direct RTE to cooperate with licence holders in the provision of transmission facilities, also apply to the private television programme service.

The latter two sections are particularly noteworthy in that the final contract between the IRTC and TV3 may contain additional 'regulations', as is the case with licensed radio broadcasters. The clause concerning co-operation with RTE in the use of broadcasting installations may mean that RTE at some future date will be obliged by the Government to co-operate with what will probably be its biggest competitor for audiences and advertising.

The main regulations for the private television service are contained in Section 18 of the 1988 Act. According to this Section, the 20 per cent news and current affairs requirement does not apply to the new television channel. This clause is replaced by the loose phrasing that a 'reasonable proportion' of such programmes must be included in the programming schedule. The main part of Section 18 concerns obligations imposed on the IRTC to ensure that the television broadcasting service complies with certain duties as outlined. These duties are identical to the ones imposed on the RTE Authority by Section 13 of the Broadcasting Authority Amendment Act 1976 (see above). Other regulations applying to TV3 include the requirement that a 'reasonable proportion' of programmes '(a)' is produced in the State or in another Member State of the EC, and '(b)' is devoted to original programme material produced by persons other than TV3 itself or 'existing broadcasting organisations' (Section 18 (4) of the Act). The latter part of this regulation is obviously one designed to encourage independent TV production companies.

Finally, Section 17 of the 1988 Act specifies that the private television service will be distributed on cable television and on the new MMDS television retransmission systems only. The Broadcasting Act 1990 has changed this in that the new service may also be transmitted 'over the air' by conventional television transmitters.

Regulations for Cable Television

Cable television in Ireland is subject to the Wireless Telegraphy Acts 1926-1972 and the regulations made in accordance with these Acts: Wireless Telegraphy (Wired Broadcast Relay Licence) Regulations 1974, the Wireless Telegraphy (Wired Relay Licence) (Amendment) Regulations 1988, and the Wireless Telegraphy Act, 1926 (Section 3) (Exemption of Certain Wired Broadcast Relay Stations) Order 1976. (The 1976 Order provides for the abolition of the requirement to licence wired broadcast relay stations to which the number of service points connected does not exceed 100 (Hall & McGovern, 1988: 20f)).

According to the 1974 regulations, licences for the relay of television and radio programmes are issued by the Minister for Communications and, unless revoked or suspended, are valid indefinitely. Licensees are obliged to comply with a number of financial, administrative and technical conditions. The main financial provision in the Regulations concern the payment of a licence fee equivalent to 5 per cent (15 per cent until 1988) of gross revenue of the licensed cable operator. The licence fee is paid to the Minister for Communications, who in turn may pay the monies collected to the RTE Authority in accordance with Section 8(b) of the Broadcasting Authority (Amendment) Act 1976. Until 1988 the total in licence fees collected was paid to RTE;

6. See the article on 'Foreign Investment in the Media in Ireland' in this issue.

in the period 1988-1990 £500,000 out of the total revenue collected was used to finance the IRTC (in accordance with Section 20 of the Radio and Television Act 1988); from 1990 onwards the licence fees are no longer given to RTE, but form part of the general revenue fund of the State.

The technical conditions to be complied with by licensees are part of the conditions of the licence, and are concerned with the standard of the service provided on a cable system. Technical inspections may be arranged by the Department of Communications, and if the system is not operating in accordance with these conditions, the licence may be revoked. (This has only happened on two occasions since the introduction of the cable television regulations.) Television and radio programmes that may be relayed, in addition to those of RTE which must be relayed at the time at which they are being broadcast, are specified in the licences.

Furthermore, the 1974 regulations require cable systems licensees, if requested by the Minister for Communications, to delete advertising matter from a programme or to insert advertising or other matter in programmes relayed to subscribers. The Minister can also require licence holders to relay local programmes. These provisions can be used in order to enable a cable operator to broadcast local programming and local advertising in channels used for the relay of foreign (British) television programmes - as is the case in Cork.

The 1988 regulations mentioned above introduce the distinction between 'basic service' and 'discretionary service' provided by the licensees: basic service means television programmes and sound programmes relayed by the licensee which a person is obliged to pay for in order to become a subscriber to a relay service; discretionary service means programmes relayed by the licensee which a subscriber to cable television may accept or refuse, without affecting the relay of basic services to that subscriber. This regulation enables the relaying of 'pay TV' channels by cable operators - to date the only cable operator providing such a discretionary service in the form of a (pay) movie channel is Cork Communications.

In early 1991, there are 43 licensed cable systems operators throughout the State, the biggest of which is the Dublin firm Cablelink with over 80 per cent of cable television subscribers. The total revenue in licence fees collected from cable systems licensees in 1990 amounted to £861,000.

Regulations for MMDS

The licensing and operation of the new television distribution system MMDS (multipoint microwave distribution system) is governed by the Wireless Telegraphy (Television Programme Retransmission) Regulations 1989. These regulations provide for the issue of licences for apparatus used solely for the purpose of retransmitting television programme services. The MMDS system was introduced primarily in order to provide multiple choice in television in areas not covered by cable systems. As this is the first time MMDS has been introduced in Europe, it is hoped, secondarily, that Ireland may serve as a 'model' for other European countries, which may also wish to introduce MMDS at some future date.

Licences for MMDS were awarded by the Minister for Communications in October 1989 in accordance with a 'MMDS Frequency Plan' drawn up by the Department of Communications, and with the suitability criteria specified in the 1989 regulations. The plan divides the state into 29 'cells' for purposes of MMDS, and the licences awarded relate to the retransmission of television services within these cells. There are seven companies or 'MMDS franchisees', each of which has been awarded exclusive licences for MMDS in a number of these cells. The seven franchisees consist of five companies active in cable television, the other two are newspaper publishers which form part of Independent Newspapers plc (7).

According to the 1989 Regulations, licences are issued for a period of one year. They can be renewed 9 times, whereupon the licences can be renewed a further 10 times, provided the Minister for Communications considers it proper to do so. Subsequently the Minister may continue to renew licences as he considers it proper to do so. Upon the grant of a licence, the licensee has to pay £20,000; each annual licence renewal fee is equivalent to 5 per cent of the gross revenue of the MMDS operator.

The licences issued state the required technical conditions and the television programme services, both those which must be, as well as those that may be, retransmitted. The only 'must carry' television programme service is TV3, the planned commercial television channel. This follows, not from the 1989 Regulations, but from Section 17 of the Radio and Television Act 1988 which states that the 'television programme service...shall be distributed on wired broadcast relay systems and television programme retransmission systems...'. Neither of the two RTE television

7. The cable TV companies are Cablelink (with MMDS licences for Dublin, Galway, Mayo and Waterford), Cork Communications (Cork, West Waterford), Westward Cable (Kerry, Clare, Limerick, Roscommon, Longford, Westmeath and Kildare), Suir Nore Relays (Tipperary, Kilkenny, Laois (partly)), and Cable Management (Ire.) Ltd. (Donegal, Sligo). The two newspaper publishers are People Newspaper Ltd. (Wicklow, Wexford) and Drogheda Independent (Cavan, Louth, Monaghan, Meath).

services is guaranteed access to MMDS. However, the regulations specify that the MMDS licensee must provide the MMDS subscriber with facilities 'for the direct connection of the television broadcast receiver used in connection with MMDS to apparatus...designed to receive the television programmes of RTE' (8).

Also stated in the licences issued by the Minister, is a minimum number of subscribers to MMDS within the area to which the licence relates. If the number of subscribers is below this minimum, then - according to the Regulations - the licence may be suspended or revoked. To date this has not yet happened, as MMDS is only currently being introduced throughout the State. The regulations also give the Minister the power to alter the charges being levied on MMDS subscribers.

Concerning the operation of MMDS within an area for which a cable systems licence has already been issued, the regulations state that the MMDS operator may only provide services to subscribers with the prior approval of the Minister, and with the agreement of the cable systems licensee.

Overall, and as in other areas of broadcasting, the Minister for Communications retains central powers concerning the operation of MMDS. This is aptly illustrated by Regulation 13(4) which states that the 'Minister may at any time, by notice published in *Iris Oifigil*, suspend, in whole or in part, for such period as may be specified in the notice, all licences for the time being in force or all such licences relating to stations in a specified district or area'.

MMDS is quite an expensive system, as the outlay for the necessary receiving equipment amounts to £125 once-off for each household availing of the facility, and then £120 in annual service charges. These charges tend to be higher than those levied on cable television subscribers, probably because of the expense involved in installing this new system of television distribution. The fairly high charges are probably one of the main reasons for the opposition to the introduction of MMDS by sections of the rural population, who would prefer to continue availing of the much cheaper illegal deflector systems traditionally used to transmit British television programmes in those parts of the State without access to cable television.

Eleven channels are available to MMDS subscribers, although the number of channels could be increased by using frequencies with a larger bandwidth than the ones allocated to MMDS. The channels currently rebroadcast by MMDS licensees tend to be those that are also relayed on existing cable systems, namely the 2 RTE, 4 British terrestrial television channels as well as a number of satellite television services. MMDS is capable of carrying radio, teletext and similar data services; it is also compatible with high definition television.

Broadcasting Act 1990

Two years after the legalization of private broadcasting services in Ireland, the Dail passed a new broadcasting law in June 1990. This Act introduces a second major change in broadcasting in Ireland, subsequent to the abolition of the monopoly in broadcasting held by the public broadcaster RTE until 1988 - namely what can only be described as a substantial weakening, or possibly even a gradual dismantling of public service broadcasting in Ireland. The legislation was mainly designed to divert advertising finance away from RTE towards the new private broadcasting services, which have been in operation since the end of 1989.

Restrictions on advertising

The new law reduces the maximum period given to advertising in any one hour of broadcasting on RTE from 10 per cent to not more than 7.5 per cent of total daily programming time (20 per cent on Atlantic 252, RTE's long-wave radio service aimed at a British audience), with a maximum of 5 (instead of 7.5) minutes in any one hour of broadcasting. Even more significantly, it also sets an annual maximum amount of revenue that RTE may earn from advertising. If RTE exceeds this maximum, then the limit in the subsequent year is reduced by the amount of the excess, adjusted by the percentage increase in the consumer price index.

Section 3 of the Act states that the limit for advertising revenue may not exceed the total licence fee revenue (which in 1989 amounted to £45 million). In effect this means that RTE, to date a commercially very successful public service broadcaster, is faced with an annual decrease in income of around £12 million. RTE has therefore been forced to restrict its expenditure on staff and on programming. It also leaves open the possibility that RTE's income could in fact be further curtailed, for example, by a government decision to reduce the licence fee, or to withhold from RTE, the total amount of licence fees collected in the State, in accordance with Section 8 of the Broadcasting Authority (Amendment) Act 1976, which states that the Minister may pay the RTE Authority an amount equal to the receipts in respect of broadcasting licence fees. This might happen if the new private television service TV3 turns out to be loss making.

Looking to the future pessimistically, this could ultimately mean that public service broadcasting in Ireland would be reduced to the provision of technical facilities for private broadcasters, as is already specified in Section 16 of the Radio and Television Act 1988 (see above), and to the transmission of a few loss-making public service broadcasts. It certainly means that RTE will in future be unable to diversify, expand and spend additional resources on programming. Without doubt, the restriction of RTE's income will lead to a reduction in the quality of RTE programmes. Considering the increasing number and availability of highly commercial foreign satellite television channels, such a development does not augur well for Ireland's cultural industries, especially film-making, or for Irish culture in general. The Government takes a different view, of course, namely that increased competition will lead to an increase in high quality programmes.

The new legislation can be seen as a direct result of the wishes of the operators of the new private commercial radio stations, some of which are turning out to be loss making or not as profitable as anticipated. This is the case with the new national radio station Century 100, which Capital Radio London has recently provided with loan capital of IR£ 1.5 million as part of a management contract (9). The 1990 Act is also in line with the interests of the proprietors of the national newspapers in Ireland. These have traditionally opposed what they see as RTE's powerful position in the advertising market, in the hope of being able to attract those advertisers unable to advertise on RTE.

Apart from the restrictions placed on RTE, the Act also makes provision for the planned TV3 to broadcast its programmes on a conventional transmission system (Section 6 of the Act), as outlined above. Obviously this section, together with the planned restrictions on RTE, are designed in the hope of ensuring the profitability of TV3.

The EC Directive

Some of the remaining sections of the Act are included in order to facilitate the implementation of the EC Directive on Television Broadcasting of 3 October 1989 (EC 1989). Article 25 of the Directive states that 'Member States shall bring into force the laws,... and provisions necessary to comply with this Directive not later than 3 October 1991', and the Broadcasting Act 1990 is obviously designed to do this. Thus, for example, Section 4 of the Act, requires the Minister to draw up a 'code of practice relating to advertising and other commercial promotions', and this Code can be drawn up in order to comply with Chapter IV (Television Advertising and Sponsorship) of the Directive.

Section 5 of the 1990 Act requires the RTE Authority 'to ensure that a reasonable proportion of the programme material on its television services is devoted to programme material produced by ... persons independent of broadcasting organizations'. For the year ending 3 October 1991, this proportion shall not be less than that broadcast by RTE in 1989. This section can be seen as a concession to independent film-makers who lobbied for the introduction of a 10 per cent quota for independent film and video makers - the same quota as is contained in Article 5 of the Directive. That this section will cease to operate from 3 October 1991 would seem to suggest it was included in order to facilitate the implementation of the EC Directive (see Barniville, 1991).

Section 8 establishes a 'right of reply' which did not previously exist in Irish media law. This section is necessitated by Chapter VI (Right of Reply) of the EC Directive and by the similar Council of Europe Convention on Transfrontier Television (Council of Europe, 1989). In accordance with Article 23 of the EC Directive, Section 8 enables the Broadcasting Complaints Commission to investigate a complaint concerning an attack on a person's honour or reputation. Section 8(b) provides for decisions by the Commission in favour of a complainant to be broadcast at a time and in a manner corresponding to that in which the offending broadcast took place. This section of the Act also applies to the private broadcasting services by virtue of Section 11 of the Radio and Television 1988, which extends the ambit of the Broadcasting Complaints Commission to these broadcasting services.

More technical sections

Section 7 of the 1990 Act is of a more technical nature - it enables RTE to appoint its own auditors, rather than having its accounts audited (usually with some delay) by the Comptroller and Auditor General. Section 7(c) requires the auditors to produce a specific statement of revenue derived by RTE from advertising, sponsorship and other forms of commercial promotion. This requirement is basically a cross-check on compliance by RTE with the advertising income limits set out in Section 3 of the Act.

Sections 9-15 of the 1990 Act are all related to the objective of creating a series of

9. See note (6).

new offences and penalties associated with the unauthorized interception of cable and MMDS services. Section 16 is designed to prevent the pirating of encrypted programme transmissions from abroad, an issue which will probably form part of some future European regulation or convention. Sections 17 and 18 are technical amendments to the Wireless Telegraphy Act 1926 and to the Broadcasting and Wireless Telegraphy Act 1988 (see Barnville, 1991).

Effects on public broadcasting

The parliamentary debate of the Act in Spring 1990 generated an unusual amount of public discussion of this piece of legislation. In fact the opposition to it was such that the Government was forced to drop its original proposal of diverting up to 25 per cent of RTE's licence fee income to the private broadcasting services. The Government, however, did not change the provision curbing RTE's advertising income, it cleverly allayed some of its critics by dropping the licence fee proposal.

In its first few months of operation, the new law has already had a number of clearly discernible effects. The limitation of airtime devoted to advertising on RTE has driven up the cost (by approximately 20 per cent) and availability of advertising on RTE. This in turn has led to some advertising business switching from RTE to other (British) television outlets. The Irish advertising industry estimates that the British ITV company Ulster Television (UTV) - UTV television programmes are widely viewed within the State - gained an additional £3 million advertising revenue in the second half of 1990. This is because some Irish advertisers are unable to afford the increased cost of advertising on RTE. The question as to whether this amount will increase or ultimately return to the State when TV3 is launched is open to debate.

The loss of a substantial proportion of its advertising income has forced RTE to implement a number of cutbacks: a reduction of the workforce by cutting 200 staff jobs (approximately 10 per cent of RTE staff); the abolition of the two RTE Choirs (which will leave Ireland without a professional choir); a curtailing of after midnight broadcasting; a trimming of the (already meagre) annual budget for Irish independent productions by over 15 per cent (from £3.1 million in 1990 to £2.5 million in 1991); a cut of 10 per cent in expenditure in all sections of RTE.

RTE is also exploring additional ways of increasing its income in those areas in which it can still operate without legal restrictions. One avenue is the provision of Irish (RTE) programmes to Irish people and those of Irish descent living in the UK and in the US. This could take the form of an ethnic (subscription) channel on US cable television and a three hour long RTE programme which would be broadcast by the BBC after its normal transmission had ended, available by subscription only.

Broadcasting Policy

The legislation outlined above shows that Ireland has no explicit or coherent national broadcasting policy. Developments in broadcasting tend to proceed with little or no public debate and to be in line with the interests of the members of the various elites in Irish society. The wider cultural and social implications for Irish society of changes in broadcasting are rarely debated - in fact decisions are made and justified in line with economic and commercial criteria. For example, the Government argued for the introduction of the Broadcasting Act 1990 in terms of 'ensuring that Irish broadcasting becomes a growth industry, bringing new investment and higher productivity into Irish broadcasting, creating new secure employment in the sector, providing choice to the consumer' (10). (Of course, Irish television audiences have always had a great amount of choice, i.e. the four British television channels and, more recently, the numerous satellite television channels.)

Traditionally Irish broadcasting policy has been reinforced by the wish to strengthen national identity and to maximize independence from Britain. Even today one aim of policy is to ensure as far as possible that Irish broadcasting remains the mainstream Irish viewers' and listeners' choice. But what has become an even more important factor in broadcasting policy is the emphasis on choice by viewers and listeners, and other economic criteria.

Certain social and economic trends are reflected in the Irish broadcast media structure. Over the last few years the Irish economy has been experiencing real growth rates which have led to increased advertising expenditure, a fact not unrelated to the willingness of businesses to invest in broadcasting. Ireland has a very young population (46 per cent are under 25 years of age), and this is probably a reason for the popularity and therefore profitability of some of the new private commercial radio stations with their music-led programming.

The high unemployment rate of around 17 per cent of the workforce enables some of the commercial broadcasters to reduce their personnel costs by paying wages substantially below the average industrial wage of approximately £11,400 per annum

10. Quotation from the (Dail) Second Stage Speech by the Minister for Justice and Communications, 7 June 1990.

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(March 1990 figure). Thus it seems that a large proportion of the 500-600 people employed in the private broadcasting sector receive annual salaries as low as £5,000.

Irish broadcasting and Europe

National broadcasting policy is fairly consistent with European tendencies, and generally there is much emphasis on the economic and financial benefits of EC membership for Ireland. As has been shown above, the licensing of private broadcasting operations and the regulation of broadcasting in Ireland reflect current European trends, such as abolition of state monopolies, privatization of state enterprises and commercialization of broadcasting. In fact it can be argued that Ireland has simply copied its European partners, without developing a policy appropriate to itself.

Concerning the recent EC Directive and Council of Europe Convention Transfrontier Television, existing Irish media law is broadly in line with these. The government was always opposed to the original French plan that the Directive should contain a binding 60 per cent quota of made-in-Europe non-news programmes. The reason for this can be found in the fact that only about 23 per cent of RTE (non-news) programmes are home produced, a further 10-15 per cent of programmes come from the UK, so that in all only 35-40 per cent of RTE television programmes fulfill the made-in-Europe criterion of the Directive (11). Because the EC Directive is so vaguely phrased that it can be safely stated that Irish media law is broadly in line with the Directive, at least until such time as a court of justice decides otherwise.

Public broadcasting

The public broadcaster suffered a setback by the introduction of legal private commercial broadcasting in 1988, but it responded by way of improved efficiency and highly competitive advertising rates. Licence fees have not been increased for years, but RTE was so successful that the Government considered it necessary to curb its activities, in order to ensure the survival of a profitable private broadcasting sector - one that is more amenable to portraying the Government in a favourable light than the public service broadcaster is, an argument put forward by Meier et al. (1989) to explain the large increase in private commercial broadcasting activities throughout Europe.

The future of public service broadcasting, at least in its current form, is uncertain, especially if the planned new private television channel TV3 is loss-making. Were this to happen, it may lead to additional resources being switched from RTE to TV3. This might lead to the privatization of RTE's Network 2 or an eventual amalgamation between the latter and TV3, as it is difficult to imagine the economic survival of three television networks in a country the size of Ireland.

Broadcasting and culture

Irish media law is rather vague in terms of the regulations on the cultural content of broadcast programmes. The laws do not contain any specific quotas for home-produced or European programmes, stating only that RTE 'shall in its programming...reflect the varied elements which make up the culture of the people of the whole island of Ireland' and 'shall have regard to the need for formation of public awareness and understanding of the values and traditions of countries other than the state, including in particular those of such countries which are members of the European Economic Community' (12). The identical phrasing can be found in the Radio and Television Act, 1988 concerning the planned private television channel.

All statutes of Irish media law maintain that broadcasters should have special regard to programmes in the Irish language. Speakers of Ireland's first official language are fairly well served in terms of radio, as a result of the existence of Raidió na Gaeltachta and of Irish language programmes on a few of the new radio services (especially on those radio stations (13), which base their programming policy on the Community Radio Charter of the National Association of Community Broadcasting (NACB 1988)). The same does not apply to television. The vast majority of Irish speakers, are very dissatisfied with the small number of Irish language programmes transmitted by RTE television, currently 3-4 hours per week or around 3 per cent of total programming hours.

Over the last few years Irish speakers have been pressurizing the Government to extend Irish language broadcasting time, and as a result of this, the democratically elected Gaeltacht Authority, Udarás na Gaeltachta, has furnished the Government with a report on the setting up of a television service in Irish. According to press reports in 1989, this study recommended the setting up of a joint Udarás-RTE television station which would broadcast a service in Irish of two hours a day, seven days a week. The service would be based in the Gaeltacht, but transmitted nationwide. A decision was

11. The quota is contained in Article 4(1), which states, inter alia, that 'Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works...a majority proportion of their transmission time, excluding the time appointed to news, sport events, games, advertising and teletext services. This proportion...should be achieved progressively, on the basis of suitable criteria'.

12. Quotation from Section 13 of the Broadcasting Authority (Amendment) Act, 1976.

13. The local radio stations in Bray, Kilkenny, and Tipperary are, at the time of writing, run in accordance with the NACB Charter.

between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;

(b) 'television advertising' means any form of announcement broadcast in return for payment or for similar consideration by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, in return for payment. Except for the purposes of Article 18, this does not include direct offers to the public for the sale, purchase or rental of products or for the provision of services in return for payment;

(c) 'surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

(d) 'sponsorship' means any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

CHAPTER II **General provisions**

Article 2

1 Each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction, or by broadcasters who, while not being under the jurisdiction of any Member State, make use of a frequency or a satellite capacity granted by, or a satellite up-link situated in, that Member State, comply with the law applicable to broadcasts intended for the public in that Member State.

2 Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive. Member States may provisionally suspend retransmissions of television broadcasts if the following conditions are fulfilled:

(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22;

(b) during the previous 12 months, the broadcaster has infringed the same provision on at least two prior occasions;

(c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of its intention to restrict retransmission should any such infringement occur again;

(d) consultations with the transmitting State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.

The Commission shall ensure that the suspension is compatible with Community law. It may ask the Member State concerned to put an end to a suspension which is contrary to Community law, as a matter of urgency. This provision is without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned.

3 This Directive shall not apply to broadcasts intended exclusively for reception in States other than Member States, and which are not received directly or indirectly in one or more Member States.

Article 3

1 Member States shall remain free to require television broadcasters under their jurisdiction to lay down more detailed or stricter rules in the areas covered by this Directive.

2 Member States shall, by appropriate means, ensure, within the framework of their legislation, that television broadcasters under their jurisdiction comply with the provision of this Directive.

countries with a low production capacity or restricted language area:

Whereas national support schemes for the development of European production may be applied in so far as they comply with Community law;

Whereas a commitment, where practicable, to a certain proportion of broadcasts for independent productions, created by producers who are independent of broadcasters, will stimulate new sources of television production, especially the creation of small and medium-sized enterprises; whereas it will offer new opportunities and outlets to the marketing of creative talents of employment of cultural professions and employees in the cultural field; whereas the definition of the concept of independent producer by the Member States should take account of that objective by giving due consideration to small and medium-sized producers and making it possible to authorize financial participation by the coproduction subsidiaries of television organizations;

Whereas measures are necessary for Member States to ensure that a certain period elapses between the first cinema showing of a work and the first television showing;

Whereas in order to allow for an active policy in favour of a specific language, Member States remain free to lay down more detailed or stricter rules in particular on the basis of language criteria, as long as these rules are in conformity with Community law, and in particular are not applicable to the retransmission of broadcasts originating in other Member States;

Whereas in order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules and in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction;

Whereas Member States, with due regard to Community law and in relation to broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more Member States, must be able to lay down different conditions for the insertion of advertising and different limits for the volume of advertising in order to facilitate these particular broadcasts;

Whereas it is necessary to prohibit all television advertising promoting cigarettes and other tobacco products including indirect forms of advertising which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on advertising by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products;

Whereas it is equally necessary to prohibit all television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls and to introduce strict criteria relating to the television advertising of alcoholic products;

Whereas in view of the growing importance of sponsorship in the financing of programmes, appropriate rules should be laid down;

Whereas it is, furthermore, necessary to introduce rules to protect the physical, mental and moral development of minors in programmes and in television advertising;

Whereas although television broadcasters are normally bound to ensure that programmes present facts and events fairly, it is nevertheless important that they should be subject to specific obligations with respect to the right of reply or equivalent remedies so that any person whose legitimate interests have been damaged by an assertion made in the course of a broadcast television programme may effectively exercise such right or remedy.

Has adopted this directive

CHAPTER I
Definitions

Article 1

For the purpose of this Directive:

(a) 'television broadcasting' means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes

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Whereas such abolition must go hand in hand with coordination of the applicable laws; whereas this coordination must be aimed at facilitating the pursuit of the professional activities concerned and, more generally, the free movement of information and ideas within the Community;

Whereas it is consequently necessary and sufficient that all broadcasts comply with the law of Member State from which they emanate;

Whereas this Directive lays down the minimum rules needed to guarantee freedom of transmission in broadcasting; whereas, therefore, it does not affect the responsibility of the Member States and their authorities with regard to the organization - including the systems of licensing, administrative authorization or taxation - financing and the content of programmes; whereas the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community therefore remain unaffected;

Whereas it is necessary, in the common market, that all broadcasts emanating from and intended for reception within the Community and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of this Directive;

Whereas the requirement that the originating Member State should verify that broadcasts comply with national law as coordinated by this Directive is sufficient under Community law to ensure free movement of broadcasts without secondary control on the same grounds in the receiving Member States; whereas, however, the receiving Member State may, exceptionally and under specific conditions provisionally suspend the retransmission of televised broadcasts;

Whereas it is essential for the Member State to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole;

Whereas this Directive, being confined specifically to television broadcasting rules, is without prejudice to existing or future Community acts of harmonization, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions and competition;

Whereas co-ordination is nevertheless needed to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities;

Whereas minimum requirements in respect of all public or private Community television programmes for European audio-visual productions have been a means of promoting production, independent production and distribution in the above mentioned industries and are complementary to other instruments which are already or will be proposed to favour the same objective;

Whereas it is therefore necessary to promote markets of sufficient size for television productions in the Member States to recover necessary investments not only by establishing common rules opening up national markets but also by envisaging for European productions where practicable and by appropriate means a majority proportion in television programmes of all Member States; whereas, in order to allow the monitoring of the application of these rules and the pursuit of the objectives, Member States will provide the Commission with a report on the application of the proportions reserved for European works and independent productions in this Directive; whereas for the calculation of such proportions account should be taken of the specific situation of the Hellenic Republic and the Portuguese Republic; whereas the Commission must inform the other Member States of these reports accompanied, where appropriate by an opinion taking account of, in particular, progress achieved in relation to previous years, the share of first broadcasts in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audio-visual production capacity or restricted language area;

Whereas for these purposes 'European works' should be defined without prejudice to the possibility of Member States laying down a more detailed definition as regards television broadcasters under their jurisdiction in accordance with Article 3 (1) in compliance with Community law and account being taken of the objectives of this Directive;

Whereas it is important to seek appropriate instruments and procedures in accordance with Community law in order to promote the implementation of these objectives with a view to adopting suitable measures to encourage the activity and development of European audio-visual production and distribution, particularly in

Television without frontiers: EC directive on... television broadcasting activities, October 1989

Source of Document:
Official Journal of the European
Communities L298, 17/10/1989

Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

The Council of the European Communities.

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the objectives of the Community as laid down in the Treaty include establishing an even closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe, encouraging the constant improvement of the living conditions of its peoples as well as ensuring the preservation and strengthening of peace and liberty;

Whereas the Treaty provides for the strengthening of peace and liberty; establishment of a common market, including the abolition, as between member States, of obstacles to freedom of movement for services and the institution of a system ensuring that competition in the common market is not distorted;

Whereas broadcasts transmitted across frontiers by means of various technologies are one of the ways of pursuing the objectives of the Community; whereas measures should be adopted to permit and ensure the transition from national markets to a common programme production and distribution market and to establish conditions of fair competition without prejudice to the public interest role to be discharged by the television broadcasting services;

Whereas the Council of Europe has adopted the European Convention on Transfrontier Television;

Whereas the Treaty provides for the issuing of directives for the coordination of provisions to facilitate the taking up of activities as self-employed persons;

Whereas television broadcasting constitutes, in normal circumstances, a service within the meaning of the Treaty;

Whereas the Treaty provides for free movement of all services normally provided against payment, without exclusion on grounds of their cultural or other content and without restriction of nationals of Member States established in a Community country other than that of the person for whom the services are intended;

Whereas this right as applied to the broadcasting and distribution of television services is also a specific manifestation in Community law of a more general principle, namely the freedom of expression as enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ratified by all Member States; whereas for this reason the issuing of directives on the broadcasting and distribution of television programmes must ensure their free movement in the light of the said Article and subject only to the limits set by paragraph 2 of that Article and by Article 56(1) of the Treaty;

Whereas the laws, regulations and administrative measures in Member States concerning the pursuit of activities as television broadcasters and cable operators contain disparities, some of which may impede the free movement of broadcasts within the Community and may distort competition within the common market;

Whereas all such restrictions on freedom to provide broadcasting services within the Community must be abolished under the Treaty;

1 OJ No C 179, 17.7.1986, p.4

2 OJ No 49, 22.2.1988, p.53, and
OJ NO C 158, 26.6.1989

3 OJ No C 232, 31.8.1987, p.29

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expected to be made by the Government towards the end of 1990, but has yet to be announced. At the time of writing, it seems that the Government is planning to force RTE to broadcast these two hours of Irish language programmes on Network 2 during peak viewing time. As Irish language programmes (according to industry guesstimates) have an audience of approximately 2 per cent of television households, and may therefore attract less advertising than their English language counterparts, this plan can be seen as another setback for RTE.

Supreme authority in broadcasting matters

As outlined above, all decisions concerning the broadcast media are either subject to the approval of, or are made directly by, the Minister for Communications. The Minister awards licences, oversees the adherence to the regulations contained in the broadcasting legislation, decides on the profitability of individual radio and television stations by drawing up the advertising regulations, etc. The 1990 Act in effect means that RTE's advertising revenue is now also politically and statutorily determined, thus abolishing the last area of broadcasting not under direct ministerial or statutory control. The Minister for Communications can be viewed, therefore, as the supreme authority in broadcasting matters, whose decisions can only be challenged by the courts or the Dail.

The role of Telecom Eireann

Unlike the situation in most other European countries, where the national PTTs are traditionally involved in the technical as well as the policy end of broadcasting, (German Telecom is a main actor in the spread of cable television), Telecom Eireann has no input into broadcasting other than in the provision of certain technical facilities. Most of the transmission facilities in the state are owned and operated by RTE, but their use is subject to approval by the Department of Communications. Although a small proportion of the private broadcasting services have their own transmission facilities, in practice most of them use the facilities provided by their main competitor RTE. In return, RTE is paid a rental fee for their use (according to the 1988 Act), but RTE cannot refuse access to them by private operators. The same will apply to the new commercial television channel.

Basically, Telecom Eireann is used by government as an instrument of industrial policy, offering advanced technological facilities to attract foreign investment. Its role may change in the future, now that it owns 60 per cent of the shares in Cablelink (the remaining shares are owned by RTE), Ireland's largest cable television operator.

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CHAPTER III

Promotion of distribution and production of television programmes

Article 4

1 Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2 Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

3 From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstance of new television broadcasters and the specific situation of countries with a low audio-visual production capacity or restricted language area.

4 The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive.

To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

Article 5

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Article 6

1 Within the meaning of this chapter, 'European works' means the following:

(a) works originating from Member States of the Community and, as regards television broadcasters falling within the jurisdiction of the Federal Republic of Germany, works from German territories where the Basic Law does not apply and fulfilling the conditions of paragraph 2;

(b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;

(c) works originating from other European third countries and fulfilling the conditions of paragraph 3.

2 The works referred to in paragraph 1(a) and (b) are works mainly made with authors and workers residing in one or more States referred to in paragraph 1(a) and (b) provided that they comply with one of the following three conditions:

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(a) they are made by one or more producers established in one or more of those States; or

(b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or

(c) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

3 The works referred to in paragraph 1(c) are works made exclusively or in co-production with producers established in one or more Member State by producers established in one or more European third countries with which the Community will conclude agreements in accordance with the procedures of the Treaty, if those works are mainly made with authors and workers residing in one or more European States

4 Works which are not European works within the meaning of paragraph 1, but made mainly with authors and workers residing in one or more Member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs

Article 7

Member States shall ensure that the television broadcasters under their jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rights holders and the broadcaster, until two years have lapsed since the work was first shown in cinemas in one of the Member States of the Community; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year.

Article 8

Where they consider it necessary for purposes of language policy, the Member States, whilst observing Community law, may as regards some or all programmes of television broadcasters under their jurisdiction, lay down more detailed or stricter rules in particular on the basis of language criteria.

Article 9

This chapter shall not apply to local television broadcasts not forming part of a national network.

CHAPTER IV **Television advertising and sponsorship**

Article 10

1 Television advertising shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and /or acoustic means.

2 Isolated advertising spots shall remain the exception.

3 Advertising shall not use subliminal techniques.

4 Surreptitious advertising shall be prohibited.

Article 11

1 Advertisements shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this Article are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.

2 In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements shall only be inserted between the parts or in the intervals.

3 The transmission of audio-visual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their programmed duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

4 Where programmes, other than those covered by paragraph 2, are interrupted by advertisements, a period of at least 20 minutes should elapse between each successive advertising break within the programme.

5 Advertisements shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements. If their programmed duration is of 30 minutes or longer, the provisions of the previous paragraphs shall apply.

Article 12

Television advertising shall not:

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or to safety;
- (e) encourage behaviour prejudicial to the protection of the environment.

Article 13

All forms of television advertising for cigarettes and other tobacco products shall be prohibited.

Article 14

Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited.

Article 15

Television advertising for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes toward social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Article 16

Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.

Article 17

1 Sponsored television programmes shall meet the following requirements:

- (a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- (b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;
- (c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

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2 Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by Article 13 or 14.

3 News and current affairs programmes may not be sponsored.

Article 18

1 The amount of advertising shall not exceed 15% of the daily transmission time. However, this percentage may be increased to 20% to include forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services, provided the amount of spot advertising does not exceed 15%.

2 The amount of spot advertising within a given one-hour period shall not exceed 20%.

3 Without prejudice to the provisions of paragraph 1, forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day.

Article 19

Member States may lay down stricter rules than those in Article 18 for programming time and the procedures for television broadcasting for television broadcasters under their jurisdiction, so as to reconcile demand for televised advertising with the public interest, taking account in particular of:

- (a) the role of television in providing information, education, culture and entertainment;
- (b) the protection of pluralism of information and of the media.

Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) to (5) and in Article 18 in respect of broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more other Member States.

Article 21

Member States shall, within the framework of their laws, ensure that in the case of television broadcasts that do not comply with the provisions of this chapter, appropriate measures are applied to secure compliance with these provisions.

CHAPTER V Protection of minors

Article 22

Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. This provision shall extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

Member States shall also ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

CHAPTER VI Right of reply

Article 23

1 Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.

2 A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.

3 Member States shall adopt the measures needed to establish the right of reply

or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

4 An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.

5 Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

CHAPTER VII
Final provisions

Article 24

In fields which this Directive does not coordinate, it shall not affect the rights and obligations of Member States resulting from existing conventions dealing with telecommunications or broadcasting.

Article 25

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 3 October 1991. They shall forthwith inform the Commission thereof.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields governed by this Directive.

Article 26

Not later than the end of the fifth year after the date of adoption of this Directive and every two years thereafter, the Commission shall submit to the European Parliament, the Council, and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting.

Article 27

This Directive is addressed to the Member States.