



Regulatory Review

SATELLITE BROADCASTS ACROSS NATIONAL BORDERS

By Gerry Oberst

While U.S. policy makers are concerned about the broadcasting of indecent material and adult content, Europeans are wrestling with a different kind of content issue—satellite-



delivered programming that incites racial and religious hatred. Regulators' responses to both types of programming highlight enforcement issues on both sides of the Atlantic.

Europeans can hardly believe the American reaction to Janet Jackson's "wardrobe malfunction," as it revealed no more than a casual look at a body part many European broadcast channels typically transmit across continental Europe. French regulators are far more concerned that the necessary quota of French-produced programming is carried on broadcast channels, regardless of whether the wardrobe is functioning or not.

Of course attitudes differ across Europe. What might be permissible on the continent could be more restricted in the United Kingdom. For instance, U.K. regulators fined a Swedish channel that was uplinking adult content from Britain, even though the programming was aired in Sweden (where it was very popular). The U.K. government also banned an Italian satellite channel, Extasi TV, that had been transmitting violent pornography into the United Kingdom, fined the Playboy channel for pushing the envelope and proscribed a few other adult channels in recent years.

The main focus in Europe, however, is not on naughty programming, but on material that incites racial or religious hatred. Satellite operators are caught in the middle, as some of the material is transmitted from outside Europe, such as from the Middle East, via satellite.

In the past year, France ordered Lebanese channel Al-Manar, as well as an Iranian channel, off French satellites after the government said it carried hate-filled programming. In contrast, the Danish Radio and Television Board in April rejected a complaint against a Kurdish satellite television channel. In that case, the Danish government said the channel was transmitting only news, which did not violate Danish law that says programs may not carry content that in any way incites viewers to hatred based on "race, sex, religion, nationality or sexual orientation."

This type of provision is common and all but the reference to sexual orientation is required by European law in the Television Without Frontiers directive. That directive requires European Union member states to apply programming standards to broadcasters under their jurisdiction and to allow programming from other member states that is approved by the home regulator. It is possible to ban programming that already passes muster from another regulator and is sent via satellite, but only under tight procedures, a provision—which the United Kingdom has used on occasion.

The problem in Europe arises when programming is transmitted from nearby non-EU countries via satellite. Under current law, if the broadcaster has not set up operations in an EU member state, then regulators must look to the nationality of the satellite carrying the material in order to make any applicable content decisions. If a non-European-licensed satellite is involved, regulators have to focus on the uplink location.

This rule can cause confusion regarding which country has the job of regulating the programming, and some broadcasters take advantage of the situation. In one case, a channel prohibited from broadcasting in the United Kingdom set up a series of shell corporations that led British regulators on a merry chase to find the responsible party. And there is concern among some regulators that a broadcaster that

does not like the type of rules it would face in its home country could move across the border, a process known as "abusive delocalization."

These issues came to a head in a meeting by the European Commission in March to discuss with national regulators how to deal with satellite-delivered programming. Among other matters, the commission announced that member states licensing communications satellites must know how the capacity aboard the spacecraft is being used. As a medium-term action, the commission suggested member states exchange information on licensed channels.

Long term, the commission is examining whether to change rules that define which country is responsible for satellite-delivered programming. One suggestion is to focus first on where the programming is multiplexed or uplinked, rather than where the satellite is licensed. The commission was poised to issue proposals on this and other changes by the summer.

So far, the United States has not faced substantial issues from programming being delivered across its borders. Indecency standards do not apply to satellite-delivered programming to the extent traditional broadcasting faces direct regulation by the U.S. Federal Communications Commission, and the First Amendment generally protects political speech. By contrast, Europe constantly faces jurisdictional issues of cross-border programming, takes a more liberal approach toward indecency and bans political speech identified as racial hatred.

Satellite operators must make their way between these differences, even though they typically have no contact with programmers who contract with transponder resellers or are multiplexed onto a channel. Because satellite transmissions are so often cross-border, this is a price the industry pays for its flexibility and wide arrays of service. ♦

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