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PRIME MINISTER

MINISTERIAL GROUP ON BROADCASTING SERVICES

SATELLITE BROADCAST SERVICES: PROGRAMME STANDARDS: MISC 128(88)1

DECISIONS

You will wish the Group to reach a clear view on

- (i) whether the Cable Authority is the right body to be asked to monitor non-DBS satellite services uplinked from abroad;
- (ii) whether the proposed scheme of formal "denunciations" of unacceptable services, and of criminal offences for advertising on them or otherwise sustaining them, is on the right lines;
- (iii) how much of (i) and (ii) should be included in the White Paper and the first Broadcasting Bill.

BACKGROUND

2. The Cable and Broadcasting Act 1984 already makes provision for the regulation of DBS services and of satellite channels received via cable. MISC 128 decided at its meeting on 29 September (MISC 128(87) 2nd Meeting) that satellite services uplinked in this country but not received on cable here should also be brought within the Cable Authority's regulatory regime. This leaves non-DBS satellite services uplinked from abroad, on which the Group agreed that the UK should continue to press for an effective Council of Europe Convention (which seemed more appropriate than the Directive being pursued in the EC). The Group recognised that it would be difficult

to establish effective controls against unsuitable material uplinked from non-convention countries, but invited the Home Secretary to consider the scope for penalising British companies which advertised on satellite services which fell short of acceptable standards of taste and decency.

MAIN ISSUES

Council of Europe Convention

3. The Home Secretary reports that there is likely to be an informal meeting of Broadcasting Ministers in the Spring to try to resolve various points of difficulty which have arisen on the drafting of the Convention. MISC 128 has already decided (MISC 128(87) 3rd Meeting) that the Broadcasting Bill planned for next Session should include provisions on the Council of Europe Convention, provided it was agreed in time. You may therefore wish to emphasise to the Home Secretary and the Foreign Secretary the importance of pressing on with this as quickly and effectively as possible.

Services from Non-Convention Countries

4. It is common ground that it will be difficult to take effective steps against offensive material broadcast from non-convention countries, whether lawfully from countries that have very different standards of taste from our own or unlawfully by pirates. Jamming is the most obvious solution. But this would be expensive, technically difficult and put legitimate communications at risk. It might also be used by Eastern European countries as justification for their jamming of our broadcasts. The Home Secretary's memorandum proceeds, therefore, on the basis that jamming is not a practical option (save, perhaps in the most extreme circumstances) and puts forward proposals, based on those canvassed at the meeting of MISC 128 on 29 September, for penalising British companies which advertise on satellite services which contain unsuitable programming.

This judgement is very probably right and reflects the view taken of jamming when private radio was a problem in the 1960s; but you may wish to satisfy yourself that the Home Secretary has indeed considered jamming before rejecting the idea.

5. The Home Secretary envisages a scheme that would work in three stages:-

i. the Cable Authority would monitor satellite services from non-Convention countries and would have power to warn a service which repeatedly included material which was obscene or grossly offensive by reason of its treatment of violence, sexual matters or otherwise;

ii. if the service ignored this warning, the Cable Authority would notify the Secretary of State, who would "denounce" it in a Statutory Instrument;

iii. a range of criminal offences could be deployed against people who had dealings with a denounced service. They would certainly cover advertising on such a service and could extend to supporting the service in various other ways.

6. It is clearly open to doubt whether a scheme on these lines would be totally effective if unacceptable satellite broadcasting ever got going. Given the inescapable constraints in taking action against services outside our jurisdiction, however, the scheme proposed by the Home Secretary does seem broadly right. You will wish to satisfy yourself that the legal concepts are sound (the Attorney General will have views on this) and that the scheme cannot be made more robust.

7. You may particularly wish to probe the need for the proposed formal warning system. This procedure is intended to mirror the arrangements in the Cable and Broadcasting Act 1984 under which the Cable Authority warns cable operators if their programming fall short of acceptable standards. But, whereas cable operators are subject to

*This is
Committee
without - "trial"
As they are beyond
the jurisdiction
can't do the latter
But what should
be done?
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an aspect?*

the obscenity law if they step too far over the mark, this sanction is not, of course, available for satellite services from abroad. In the case of, say, a pirate station showing pornography, it would seem absurd for no action at all to be possible until the Cable Authority had tracked down the station and delivered the statutory warning. Even without a formal warning mechanism, the Cable Authority would, of course, be free to give informal warnings where appropriate to foreign satellite stations which fell short of acceptable standards.

8. On handling, you may wish to probe the proposal to leave the denunciation and criminal offence provisions out of the first Broadcasting Bill. The Home Office are apparently concerned that, although the proposed offences are precedented in the Marine etc Broadcasting (Offences) Act 1967, which deals with pirate radio stations, they would be at the outer edges of normal criminal law principles - being aimed not at those responsible for the mischief in question but instead at those who merely advertised etc on these services. The Home Office believe that there is only a very slight risk of such services becoming available here and that without concrete evidence to the contrary it would be difficult to get the necessary provisions through Parliament. They may fear that the Government might be derided for panicking about a problem that was entirely imaginary. They envisage instead that the proposed offences should be kept in reserve to be brought forward only if problems arise in practice.

9. On the other hand, there are arguments pointing precisely in the opposite direction. While the Home Office's assessment of the risks of such services becoming available here is very possibly correct, the idea that legislation to create criminal offences should merely be kept in reserve is likely to be seen as pusillanimous by those concerned about programme standards. It might detract from the impact of the proposals to be included in the first Broadcasting Bill to bring broadcasting within the obscenity law and to put the Broadcasting Standards Council on a statutory footing. If the Government were to reserve new criminal sanctions until such time as offensive material was actually broadcast, it could well take

12 months or more to get the necessary legislation on to the statute book, by which time much damage would have been done. If the Home Secretary is right to argue that it is the threat rather than the actuality of this kind of power that is effective, then it should presumably be legislated before there is an evident problem. And it would certainly look a very weak position for the Government to put the Cable Authority's monitoring role into the Bill without any provisions on enforcement. (Indeed, it might be better to have nothing in the Bill at all than to come forward with such a broken-backed proposal.) All in all, you may feel that it would be best to make provision in the first Broadcasting Bill for the entire legislative scheme put forward by the Home Secretary.

10. Finally, the Home Secretary argues that the scheme he puts forward should not extend to political or religious propaganda, and this seems right. It would be extremely difficult for the Cable Authority - or, indeed, the Government - to form a view on these questions and hard to see what criteria could be applied. Moreover, it seems unlikely that religious or political proselytizers would be deterred by bans on British advertisers.

HANDLING

11. You will wish to invite the HOME SECRETARY to introduce his paper. THE TRADE AND INDUSTRY SECRETARY, the FOREIGN SECRETARY and the ATTORNEY GENERAL will have comments.

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5 February 1988