

The Danish Radio and Television Board
H.C Andersens Boulevard 2
DK-1553
Kobenhavn V

08 April 2010

CHRIS OWEN
Licensing Executive, TV Broadcast Licensing

Direct line: 020 7981 3972

chris.owen@ofcom.org.uk

Dear Mr. Christian Sherfig

Dear Mr. Jans Schans Christensen

Dear Mr. Kaspar D Lindhardt

Request to Ofcom regarding questions of jurisdiction

Thank you for your letter dated 21 January 2010 in which you informally requested clarification regarding the jurisdiction of two companies, Viasat Broadcasting UK Limited ("Viasat") and SBS Broadcasting Networks Limited ("SBS"), who are licensed by Ofcom to provide Danish speaking television channels to Denmark. Your authority felt these channels should be subject to Danish jurisdiction with regards to broadcasting activity. You wished to clarify the question of jurisdiction of the two companies before any application of the new procedure of co-operation rules detailed in Article 3 of the new AVMS directive.

In particular, you questioned whether the channels belonging to SBS and Viasat should be subject to Danish jurisdiction as the range of programmes and advertising on the television channels, which are broadcast from the UK, are generally transmitted in Danish and both programmes and advertising are directed towards a Danish audience.

Following your request, we wrote to SBS and Viasat directly asking them the questions raised in your letter so we could determine who is the appropriate Media Service Provider (as defined in the Audiovisual Media Services Directive) for their Ofcom licensed services and whether the two companies still fall under UK jurisdiction for the purposes of holding the relevant broadcasting licences. Copies of these letters are enclosed in Annex 1.

We have now received the broadcasters' responses and are satisfied on the basis of the information provided by them (copies of their responses are enclosed as Annex 2) that both are established in the UK and correctly licensed by Ofcom in accordance with the relevant provisions of the Television without Frontiers Directive, as amended by the Audiovisual Media Services Directive, as both SBS and Viasat have their Head Office in London and editorial decisions regarding the services are taken in the UK, thereby meeting the test of jurisdiction as set out in Articles 2(2), 2(3) and (2)(4) of the Audiovisual Media Services Directive. For your information, both broadcasters have given their consent to Ofcom

forwarding the enclosed copies of response letters received from them in answer to the issues raised.

As set out in their responses, both SBS and Viasat have also confirmed that they are the 'Media Service Provider' (within the meaning of Article 1 (c) and (d) of the AVMS directive), as they each exercise 'effective control' over the Ofcom licensed services that they broadcast on the basis that they select and organise the programmes of those services into a chronological order. Based upon the information provided by both broadcasters, we are satisfied that this is the case. Viasat also confirmed that no material changes which might affect jurisdiction have taken place since the time of issue of the channel's Ofcom licences.

In your letter you also make reference to TV3 A/S, a subsidiary company to Viasat Broadcasting UK Ltd., established and based in Denmark, with around 60 employees and question its involvement with regards to Viasat's Ofcom licensed services. In response to your questions, Viasat stated that TV3 A/S provides support services for its UK operations (advertising, research, press, etc). For this reason, it cannot be considered to be the 'Media Service Provider' within the meaning of Article 1 of the AVMS nor can the TV3 A/s office be considered the Head Office for the channels.

TV3 A/S has a Danish management in Denmark directed by CEO, Jorge Madesn (MTG Denmark), CEO Jesper Gronholdt (TV3), and CEO Kim Ponder (Viasat). Viasat has also confirmed that all editorial decisions regarding the Ofcom licensed channels are taken in London.

We hope that these clarifications are helpful and that we have addressed your concerns regarding jurisdiction. We also sincerely apologise for the delay in responding to your informal request and remain at your disposal for any further questions that you may have.

Yours sincerely

Chris Owen

Enc.

Annex 1

Copy of Letter from Kathleen Stewart to SBS Broadcasting Networks Limited dated 29 January 2010.

Copy of letter from Kathleen Stewart to Viasat Broadcasting UK Limited dated 27 January 2010.

Annex 2

Copy of response from Tony Ghee, SBS Broadcasting Networks Limited dated 23 February 2010.

Copy of response from Jonny Searle, Viasat Broadcasting UK Limited dated 05 March 2010.