

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

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Judgment of the Court in Case C-89/04

*Mediakabel BV v Commissariaat voor de Media*

**A PAY-PER-VIEW SERVICE WHICH CONSISTS OF TRANSMITTING  
TELEVISION PROGRAMMES INTENDED FOR RECEPTION BY THE PUBLIC  
AND WHICH IS NOT SUPPLIED ON INDIVIDUAL DEMAND IS A TELEVISION  
BROADCASTING SERVICE**

*Providers of such a service must comply with the obligation to reserve a majority proportion  
of their transmission time for European works.*

The Dutch company Mediakabel offers the subscription service, ‘Mr Zap’, which allows reception of television broadcasts which supplement the programmes transmitted by the network supplier, using a decoder and a smart card. Mediakabel also offers pay-per-view service for additional programmes as part of an offer called ‘Filmtime’. If a Mr Zap subscriber wishes to order a film from the Filmtime catalogue, he makes that order separately using his remote control or telephone and, after identifying himself using a personal identification code and paying by automatic debit, he receives an individual key which allows him to view one or more of the 60 films on offer each month, at the times determined by Mediakabel.

According to the Netherlands Media Authority, the Commissariaat voor de Media, Filmtime is a television broadcasting service. Mediakabel maintains, however, that it is an interactive service supplied at individual request falling within the category of information society services and thus outside the scope of competence of the Commissariaat voor de Media. It claims that Filmtime cannot be made subject to the requirements of the European directive governing television broadcasting<sup>1</sup>, in particular the obligation to reserve a certain percentage of the programming time for European works.

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<sup>1</sup> Council Directive 89/552/EEC 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 (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60).

In those circumstances, the Raad van State, before which the dispute was brought, referred questions to the Court of Justice for a preliminary ruling.

The Court states that a service comes within the concept of ‘television broadcasting’ referred to in the European directive, if it consists of the initial transmission of television programmes intended for reception by the public, that is, an indeterminate number of potential television viewers, to whom the same images are transmitted simultaneously. The manner in which the images are transmitted is not a determining element in that assessment.

**A service such as Filmtime, which consists of broadcasting television programmes intended for reception by the public and which is not provided at the individual request of a recipient of services, is a television broadcasting service.** The determining criterion for this concept is the broadcast of television programmes ‘intended for reception by the public’. Priority should therefore be given to the standpoint of the service provider in the analysis of this concept.

The Court also observes that the difficulty for the provider of a service such as Filmtime to comply with the obligation to reserve a certain percentage of programming time for European works may not preclude its classification as a television broadcasting service.

First, since the service in question fulfils the criteria for being classified as a television broadcasting service, it is not necessary to take into account the consequences of that classification for the service provider. The scope of application of legislation cannot be made contingent on possible adverse consequences it may have for traders to whom the Community legislature intended it to apply.

Second, the provider of a service such as Filmtime is not entirely prevented from complying with that obligation. The directive requires television broadcasters to comply with a broadcast quota for European works. It cannot be intended to require television viewers to actually watch those works. Although it is undeniable that Mediakabel does not determine the works which are actually chosen and watched by the subscribers, the fact remains that it, like any operator broadcasting television programmes intended for reception by the public, chooses the works which it broadcasts. **The provider knows his overall transmission time and can thus comply with the obligation imposed on him to reserve for European works a majority proportion of his transmission time.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: EN, FR, DE, NL, IT*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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